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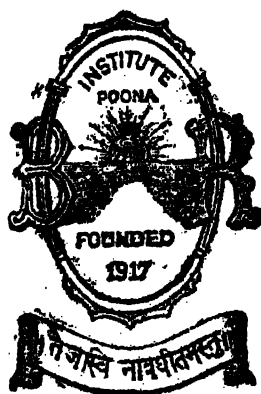
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HISTORY OF DHARMAŚĀSTRA

(ANCIENT AND MEDIÆVAL
RELIGIOUS AND CIVIL LAW)

BY

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PREFACE

The second volume of the History of Dharmaśāstra was published in the third quarter of 1941. In the Preface to that volume I held forth hopes that the next volume dealing with the remaining subjects comprised in Dharmaśāstra might be placed before scholars in about three years thereafter. The Great War was then being fought in Europe and it was generally believed that India would remain free from the fear of actual invasion. But such fond hopes were shattered by the sudden attack on Pearl Harbour by Japanese bombers on 7th December 1941. Japan gained rapid and phenomenal victories and within about three months from the attack on Pearl Harbour vast territories from the Philippines to Burma fell into the hands of the victors. Calcutta and Trincomalee were bombed. Serious fears were entertained about an invasion of the mainland of India by land, sea and air. There was great panic in such coastal cities as Madras, Bombay and Karachi. The matters uppermost in the minds of Government officials and the members of the public were A. R. P. measures, the recruiting of men for the army, navy and air force and the removal of families and valuables to places of safety in the interior. Important and rare books from the libraries of the Bombay Asiatic Society and of the University of Bombay were taken to distant places for reasons of security. During almost the whole of 1942 it was very difficult for me to work on the preparation of the third volume in the midst of a general atmosphere of panic caused by the fear of invasion and the removal of valuable reference books from Bombay. Owing to the war there has been great scarcity of paper and printing also has become very costly. I decided upon writing only on a few of the several subjects that remained to be dealt with and chose Rājadharma, Vyavahāra and Sadācāra, the treatment of which is now placed before the public. Scarcity of paper and labour is responsible for the fact that this third volume has been in the press for nearly three years. The present volume increased in bulk beyond expectation. The fourth and last volume will deal with the following subjects: Pātaka, karmavipāka and prāyaścitta; antyeṣṭi, aśauca and śrāddha; tīrtha; vrata; kāla and muhūrta; śānti; Paurāṇa dharma; the influence of the Pūrvamīmāṁsā and other śāstras on dharmaśāstra; the religious and philosophical background of dharmaśāstra; the essentials of our culture, its future, the coming

social and other trends and their impact on the dogmas and ideals of Dharmaśāstra. I am personally anxious to finish all the remaining work as early as possible. But looking to my age (I am nearly 67 now), to my ailments and to the number of subjects that remain to be dealt with, it is impossible for me to say when the next and last volume may be published. This volume also is full of quotations, refers to many inscriptions, judicial decisions and legislative enactments. The reasons for this have been stated at length in the Preface to the second volume and I do not desire to repeat them here. In the general index to the second volume full references to works like the Manusmṛti were not given, because such works were quoted on almost every page. But some critics found fault with this; therefore in the index to this volume full references to all works are inserted.

All that now remains is the pleasant duty of acknowledging my obligations to others. Bloomfield's Vedic Concordance, the Vedic Index of Professors Macdonell and Keith and several volumes of the Sacred Books of the East have been very useful in preparing this volume as in the case of the preceding one. I wish to mention specially the debt I owe to the late Mahāmahopādhyāya Kamalakṛṣṇa Smṛtitīrtha for his editorial work on twelve volumes on the different branches of dharmaśāstra, which have been of great use to me in writing all the volumes of my History viz. Hāralatā, Vivādaratnākara, Gṛhastharatnākara, Kṛtyaratnākara, Tīrthacintāmaṇi, Varṣakriyākaumudī, Dānakriyākaumudī, Śrāddhakriyākaumudī, Śuddhikaumudī, Daṇḍaviveka, Rājadharmakaustubha and Agastyasaṁhitā. I am highly obliged to Paramahaṁsa Svāmī Kevalānanda Sarasvatī of Wai for frequent help and guidance in solving some intricate problems of Dharmaśāstra, to Prof. N. A. Gore, M. A. of Poona for help in the careful correction of proofs, to Tarkatīrtha Raghunāthaśāstri Kokje of Lonavla and Mr. N. G. Chapekar, B. A., LL. B. (retired F. C. Sub-judge), of Badlapur for reading through the whole volume and suggesting some additions and corrections.

Assistance in various ways during the progress of the work for the last four years was very kindly rendered by a host of friends and acquaintances, among whom I should like to make special mention of Prof. H. D. Velankar, Dr. R. N. Dandekar, Dr. S. K. Belvalkar, Rao Bahadur Prof. Rangaswami Aiyangar, Dr. A. S. Altekar, Mr. P. K. Gode, Dr. Raghavan, Mr. S. N. Joshi of Bhārata-itihāsa-saṁśodhaka-maṇḍala at Poona, Mr. Bhabatosh

Bhattacharya (son of M. M. Kamalakṛṣṇa Smṛtitīrtha), Mr. S. L. Katre of Ujjain, Prof. A. M. Paramaśivanandan of Pacchaiappa College at Madras, the late Pandit Rangacarya Raddi. Thanks are due to all these and many others for help and interest in this volume. It need not be expressly stated that I alone am responsible for the views and mistakes contained in this volume. I sincerely thank the Manager of the Aryabhushan Press, Poona, for carrying out the work of printing with care and promptitude in spite of difficulties caused by war conditions and paper and labour shortage.

In a work bristling with thousands of quotations and references it is likely that many slips have escaped attention. The indulgence of the reader is sought for forgiveness in the matter of several misprints in the footnotes caused by loss or displacement of the parts of letters in the process of printing.

BOMBAY,
1st October, 1946.

P. V. KANE

TABLE OF CONTENTS

LIST OF ABBREVIATIONS EMPLOYED

A. I. R. = All India Reporter of Nagpur
Ait. Br. = Aitareya Brāhmaṇa
All. = Indian Law Reports, Allahabad Series
A. L. J. = Allahabad Law Journal
Āp. = Āpastamba (generally the author of the Dharmasūtra is meant)
Āp. Dh. S. = Āpastamba-dharmasūtra
Āp. M. P. = Āpastamba-mantra-pāṭha
A. S. W. I. = Archaelogical survey of Western India
Āśv. Gṛ. = Āśvalāyana-gṛhyasūtra
Baud. Dh. S. = Baudhāyana-dharmasūtra
B. I. = Bibliotheca Indica series, Calcutta
Bom. = I. L. Reports, Bombay Series
Bom. G. = Bombay Gazetteer volumes
Bom. H. C. R. = Bombay High Court Reports (vol. I–XII)
Bom. L. R. = Bombay Law Reporter (edited by Ratanlal and Dhirajlal)
B. O. R. I. / B. O. R. Institute = Bhandarkar Oriental Research Institute, Poona
Bṛ. = Smṛti of Bṛhaspati
Bṛ. Up. = Bṛhadāraṇyaka Upaniṣad
B. R. W. W. = Beal's Buddhist Records of the Western world
Cal. = Indian Law Reports, Calcutta Series
Catur. = Caturviṁśatimata
Chān. Up. = Chāndogya Upaniṣad
C. I. I. or Corpus I. I. = Corpus Inscriptionum Indicarum (vol. relating to Inscriptions of the times of Aśoka vol. II relating to Kuṣaṇa Inscriptions and vol. III relating to Gupta Inscriptions)
C. L. J. = Calcutta Law Journal
Com. = Commentary or Commentator (according to context)
Cr. ed. = Critical edition (of the Mahābhārata, Poona)
C. W. N. = Calcutta Weekly Notes (Law Reports)
D. B. = The Dāyabhāga of Jīmūtavāhana
D. C. = Dattaka-candrikā

D. C. = Deccan College Collection (when mss. are concerned)
Dh. S. = Dharmasūtra
D. K. S. = Dāyakramasaṅgraha of Śrīkṛṣṇa
D. N. = Dattakamīmāṁsā of Nandapaṇḍita
E. C. = Epigraphia Carnatica
E. I. = Epigraphia Indica
F. B. = Full Bench (decision)
Fick = The Social organization in North-east India in Buddha's time (translated from German by Dr. Shishirkumar Mitra, 1920)
Gaut. = Gautama-dharmasūtra
Gṛ. R. = Gṛhastharatnākara of Caṇḍeśvara
H. D. / H. Dh. = History of Dharmaśāstra
Hir. gṛ. = Hiraṇyakeśi-gṛhya-sūtra
I. A. = Indian Antiquary
I. A. = Indian Appeals (Law Reports). The context will always indicate whether I. A. stands for the volumes of the Indian Antiquary or for the Law Reports, Indian Appeals
I. H. Q. = Indian Historical Quarterly
I. L. R. = Indian Law Reports
Ins. = Inscription or Inscriptions
I. P. C. = Indian Penal Code
Jai. = Jaimini's Pūrvamīmāṁsāsūtra
J. A. O. S. = Journal of the American Oriental Society
J. A. S. B. = Journal of the Asiatic Society of Bengal
J. B. O. R. S. = Journal of the Bihar and Orissa Research Society
J. R. A. S. = Journal of the Royal Asiatic Society (London)
Kām. = Kāmandakīya-nīti-sāra
Kāt. = Smṛti of Kātyāyana reconstructed by P. V. Kane
Kauṭ. = Kauṭilya's Arthaśāstra
K. V. N. = Kalivarjyavinirṇaya (ms)
L. R. I. A. = Law Reports, Indian Appeals (Privy Council)
Mad. = Indian Law Reports, Madras Series
Mārk. = Mārkaṇḍeyapurāṇa
Medh. = Medhātithi, the oldest commentator of Manusmṛti

Mit. = Mitākṣarā on the Yājñavalkya-smṛti
M. L. J. = Madras Law Journal
Moo. I. A. = Moore's Indian Appeals (Reports
N. or n. = footnote
Nār. = Nārada-smṛti
Nir. S. = Nirṇayasindhu
Nītisāra = Kāmandakīya-nīti-sāra
N. I. A. = New Indian Antiquary, Poona
Pāṇ. = Pāṇini's Aṣṭādhyāyī
Pār. Gṛ. = Pāraskara-gṛhya-sūtra
Par. M. = Parāśāra-Mādhavīya
Patna = Indian Law Reports, Patna Series
P. C. = Privy Council
P. J. = Printed Judgments of the Bombay High Court
Q. or q. = Quoted
Raghu. = Raghuvaṁśa
R. D. K. / Rāja Dh. K. = Rājadharmakāṇḍa of Kalpataru (on p. 43 R. D. K. by mistake stands for Rājadharma-kaustubha)
Rājadharma-K. = Rājadharmakaustubha of Anantadeva
Rāja N. P. / R. N. P. = Rājanītiprakāśa (a part of the Vīramitrodaya of Mitramiśra)
Rājat. = Rājataraṅgiṇī
Ṛg. = Ṛgveda
Saṁ. K. = Saṁskāra-kaustubha
Saṁ. Pr. = Saṁskāraprakāśa (a part of the Vīramitrodaya of Mitramiśra)
Śāṅ. Gṛ. = Śāṅkhāyana-gṛhya-sūtra
Śat. Br. = Śatapatha-brāhmaṇa
S. B. E. = Sacred Books of the East (series edited by Max Müller)
S. I. I. = South Indian Inscriptions
Sm. C. = Smṛticandrikā
Sm. Kau. = Smṛti-kaustubha
Sm. M. = Smṛtimuktāphala
Śr. = Śrautasūtra
S. V. = Sarasvatīvilāsa

Śukra = Śukranītisāra
Tai. Ār. = Taittirīya Āraṇyaka
Tai. Br. = Taittirīya Brāhmaṇa
Tai. S. = Taittirīya Saṁhitā
Tai. Up. = Taittirīya Upaniṣad
T. L. L. = Tagore Law Lectures
Tr. = Translation or translated
Vāj. S. = Vājasaneya-saṁhitā
Vas. = Vasiṣṭha-dharma-sūtra
V. C. = Vivāda-cintāmaṇi
V. M. } V. Mātṛkā } = Vyavahāra-mātṛkā of Jīmūtavāhana (except on p. 709)
V. Mayūkha = Vyavahāramayūkha (In a very few places such as on p. 709 through oversight V. M. stands for V. Mayūkha)
V. Nir. } V. Nirṇaya } = Vyavahāranirṇaya of Varadarāja
V. P. = Vyavahāraprakāśa (a part of the Vīramitrodaya of Mitramiśra)
V. R. = Vivādaratnākara of Caṇḍeśvara
Viṣṇu } Viṣṇu Dh. S. } = Viṣṇudharmasūtra
V. T. = Vivādatāṇḍava of Kamalākara
Vy. Nir } Vy. Nirṇaya } = Vyavahāranirṇaya of Varadarāja
Yāj. = Yājñavalkyasmṛti
अथर्व = अथर्ववेद
अर्थशास्त्र = कौटिलीय-अर्थशास्त्र
आप. ध. सू. = आपस्तम्बधर्मसूत्र
आप. म. पा. = आपस्तम्बमन्त्रपाठ
ऋ. = ऋग्वेद
ऐ. ब्रा. = ऐतरेयब्राह्मण
कलिवर्ज्यवि. = कलिवर्ज्यविनिर्णय (ms)
कात्या. = कात्यायनस्मृतिसारोद्धार
कात्या. श्रौ. = कात्यायनश्रौतसूत्र
काम } कामन्दक } = कामन्दकीयनीतिसार
कृत्यर. = कृत्यरत्नाकर

कौ.
कौटिलीय } = कौटिलीय अर्थशास्त्र

गृह. र. = गृहस्थरत्नाकर

गौ. = गौतमधर्मसूत्र

चतुर्वि. = चतुर्विंशतिमत

छा. उ. = छान्दोग्योपनिषद्

जै. = जैमिनीयपूर्वमीमांसासूत्र

जै. न्या. मा. = जैमिनीयन्यायमालाविस्तार

तै. आ. = तैत्तिरीयारण्यक

तै. ब्रा. = तैत्तिरीयब्राह्मण

तै. सं. = तैत्तिरीयसंहिता

दत्त. च. = दत्तकचन्द्रिका

दत्त. मी. = दत्तकमीमांसा

नारद. = नारदस्मृति

नीतिवा.
नीतिवाक्या. } = नीतिवाक्यामृत

नीतिसार = कामन्दकीयनीतिसार

परा. मा. = पराशरमाधवीय

पा. = पाणिनि's अष्टाध्यायी

बुध.
बुधभू. } = बुधभूषण

बृह. = बृहस्पतिस्मृति (as quoted in digests)

बृह. उप. = बृहदारण्यकोपनिषद्

बृहत्सं. = बृहत्संहिता

बौ. ध.
बौ. ध. सू. } = बौधायनधर्मसूत्र

बौ. श्रौ. = बौधायनश्रौतसूत्र

मद. पा. = मदनपारिजात

मनु. = मनुस्मृति

मिता. = मिताक्षराटीका of विज्ञानेश्वर

मीमांसाकौ.
मी. कौ. } = मीमांसाकौस्तुभ of खण्डदेव

मेधा. = मेधातिथि's भाष्य on मनुस्मृति

या. or याज्ञ. = याज्ञवल्क्यस्मृति

रा. ध. कौ. or राजध. कौ. or राजधर्मका. = राजधर्मकौस्तुभ

रा. नी. प्र. or राजनी. प्र. or राजनीतिप्र. = राजनीतिप्रकाश of मित्रमिश्र

राज. र. or राजनीतिर. = राजनीतिरत्नाकर of चण्डेश्वर

वाज. सं. = वाजसनेयसंहिता
वि. चि. = विवादचिन्तामणि
वि. ता. = विवादताण्डव of कमलाकर
वि. र. = विवादरत्नाकर
व्यव. त. = व्यवहारतत्त्व of रघुनन्दन
व्य. नि or व्यव. नि. = व्यवहारनिर्णय
व्य. प्र. = व्यवहारप्रकाश of मित्रमिश्र
व्य. म. or व्य. मयूख = व्यवहारमयूख
व्य. मा. = व्यवहारमातृका
व्यव. सा. = व्यवहारसार
शुक्र.
शुक्रनी. } = शुक्रनीतिसार
शुक्रनीति.
सं. कौ. = संस्कारकौस्तुभ
सत्या. श्रौ. = सत्याषाढश्रौतसूत्र
स. वि. = सरस्वतीविलास
स्मृतिच. = स्मृतिचन्द्रिका
स्मृतिमु. = स्मृतिमुक्ताफल

CHRONOLOGICAL TABLE.

(of some important works and authors referred to in this volume)

N. B.—Some dates, particularly of ancient works, are more or less conjectural.

4000 B. C. — 1000 B. C. — The period of the Vedic Saṁhitās, Brāhmaṇas and Upaniṣads. Some hymns of the Ṛgveda, the Taittirīya Saṁhitā and Brāhmaṇa and the Atharvaveda may possibly go back to a period earlier than even 4000 B. C. and some of the Upaniṣads (even from among those that are regarded as the earliest ones) may be later than 1000 B. C.

800 B. C. — 500 B. C. — The Nirukta.

800 B. C. — 400 B. C. — The principal śrauta sūtras (of Āpastamba, Āśvalāyana, Baudhāyana, Kātyāyana, Satyāṣāḍha and others) and some of the Gṛhyasūtras (such as those of Āpastamba and Āśvalāyana).

600 B. C. — 300 B. C. — The dharmasūtras of Gautama, Āpastamba, Baudhāyana, Vasiṣṭha and the Gṛhyasūtras of Pāraskara and a few others.

600 B. C. — 300 B. C. — Pāṇini.

500 B. C. — 200 B. C. — Jaimini's Pūrvamīmāṁsāsūtra.

300 B. C. — Vararuci Kātyāyana, author of Vārtikas on Pāṇini.

300 B. C. — 100 A. D. — Arthaśāstra of Kauṭilya.

150 B. C. — The Mahābhāṣya of Patañjali.

200 B. C. — 100 A. D. — Manusmṛti.

100 A. D. — 300 A. D. — Yājñavalkyasmṛti.

100 A. D. — 300 A. D. — Viṣṇudharmasūtra.

100 A. D. — 400 A. D. — Nāradasmṛti.

200 A. D. — 500 A. D. — Śabara, com. of Jaimini.

300 A. D. — 500 A. D. — Bṛhaspatismṛti on Vyavahāra (not yet found,. Extracts translated in S. B. E. vol. 33).

300 A. D. — 600 A. D. — Some of the extant Purāṇas, such as Vāyu, Viṣṇu, Mārkaṇḍeya, Matsya, Kūrma.

400 A. D. — 600 A. D. — Kātyāyanasmṛti on Vyavahāra (not yet found. Extracts collected by me and translated in English).

400 A. D. — 600 A. D. — Kāmandakīyanītisāra.

505 A. D. — 587 A. D. — Varāhamihira, author of Bṛhatsaṁhitā, Bṛhajjātaka, Pañcasiddhāntikā and other works.

600 A. D. — 650 A. D. — Bāṇa, author of the Kādambarī and the Harṣacarita.

650 A. D. — 750 A. D. — Kumārilabhaṭṭa, author of Ślokavārtika, Tantravārtika and Ṭup-ṭīkā.

600 A. D. — 900 A. D. — Most of the smṛtis and some of the Purāṇas.

788 A. D. — 820 A. D. — Śaṅkarācārya, the great Advaita philosopher.

800 A. D. — 850 A. D. — Viśvarūpa, com. of Yājñavalkyasmṛti.

900 A. D. — Medhātithi, com. of Manusmṛti.

900 A. D. — 1100 A. D.—Pārthasārathimiśra, author of Śāstradīpikā, Tantraratna, Nyāyaratnākara.

966 A. D. — Utpala, com. of Bṛhat-saṁhitā and Bṛhajjātaka.

1000 A. D. — 1055 A. D. — Dhāreśvara (Bhoja).

1070 A. D. — 1100 A. D. — Vijñāneśvara, the author of the Mitākṣarā com. on Yājñavalkya.

1080 — 1140 A. D.—Govindarāja, author of a com. on Manusmṛti.

1100 — 1150 A. D. — Lakṣmīdhara, author of a large digest called Kṛtya-kalpataru or simply Kalpataru.

1100 — 1150 A. D. — Jīmūtavāhana, author of Dāyabhāga, Kālaviveka and Vyavahāramātṛkā.

1114 — 1183 A. D. — Bhāskarācārya, author of Siddhāntaśiromaṇi, of which Līlāvatī is a part.

1125 A. D. — Aparārka, author of a com. on the Yājñavalkyasmṛti.

1127 — 1138 A. D. — Mānasollāsa or Abhilaṣitārthacintāmaṇi of Someśvaradeva.

1150 — 1160 A. D. — Rājataraṅgiṇī of Kalhaṇa.

1150 — 1200 A. D. — Smṛtyarthasāra of Śrīdhara.

1200 — 1225 A. D. — Smṛticandrikā of Devaṇṇabhaṭṭa.

1150 — 1300 A. D. — Haradatta, com. on Gautamadharmasūtra and Āpastambadharmasūtra.

1150 — 1300 A. D. — Kullūka, com. of Manusmṛti.

1200 — 1300 A. D. — Vyavahāranirṇaya of Varadarāja.

1260 — 1270 A. D. — Caturvargacintāmaṇi of Hemādri.

1290 — 1370 A. D. — Caṇḍeśvara, author of Rājanītiratnākara, Vivādaratnākara, Gṛhastharatnākara and other works.

1300 — 1380 A. D. — Mādhavācārya, author of Parāśaramādhavīya.

1360 — 1390 A. D. — Madanapārijāta compiled under king Madanapāla.

1375 — 1460 A. D. — Śūlapāṇi, author of Dīpakalikā, com. on Yājñavalkya.

1400 — 1500 A. D. — Nyāyasudhā of Someśvara, com. on Tantravārtika.

1400 — 1450 A. D. — Vivādacandra of Misarumiśra.

1425 — 1450 A. D. — Madanaratna of Madanasiṁha.

1490 — 1512 — The Vyavahārasāra of Dalapati, a part of the Nṛsiṁhaprasāda.

1500 — 1525 A. D. —. The Sarasvatīvilāsa compiled under king Pratāparudradeva.

1500 — 1550 A. D. — Vardhamāna, author of Daṇḍaviveka.

1500 — 1550 — Vācaspatimiśra, author of Vivādacintāmaṇi and several other works.

1520 — 1575 A. D. — Raghunandana, author of Dāyatattva, Divyatattva, Vyavahāratattva and other Tattvas.

1560 — 1620 A. D. — Śaṅkarabhaṭṭa, author of Dvaitanirṇaya or Dharmadvaitanirṇaya.

1590 — 1630 A. D. — Nandapaṇḍita, author of the Dattakamīmāṁsā and Vaijayantī, com. on Viṣṇudharmasūtra.

1610—1640 A. D.—Kamalākarabhaṭṭa, author of Nirṇayasindhu, Vivādatāṇḍava, Śūdrakamalākara and other works.

1615 — 1645 A. D. — Nīlakaṇṭhabhaṭṭa, author of Nītimayūkha, Vyavahāramayūkha and other Mayūkhas.

1615 — 1645 A. D. — Mitramiśra, author of Vīramitrodaya, divided into Rājanītiprakāśa, Vyavahāraprakāśa and other prakāśas.

1650 — 1680 A. D. — Anantadeva, author of Rājadharmakaustubha.

1750 — 1820 A. D. — Bālambhaṭṭa, author of the Bālambhaṭṭi, com. on the Mitākṣarā.

1790 A. D. — Dharmasindhu of Kāśīnātha.

BRIEF SYNOPSIS OF THE CONTENTS

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(N. B.—Works referred to only once or twice and those already set out on pp. 14n and 413–414 have generally been omitted).

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ADDITIONS AND CORRECTIONS

(A few misprints due to the loss or displacement of such loose parts as *anusvāras* have not been specified, since they can be easily detected).

Page	Line or note	
22	n. 24	read विष्णुधर्मसूत्र III. 95;
31	n. 41	read शान्ति 59 for शान्ति 9
57	n. 70	The verse दुष्टस्य दण्डः &c. occurs also in वराहमिहिर's योगयात्रा 2. 33
57	n. 70	read सर्वकल्मष॰
62	l. 3	read 'Śāntiparva (56. 45-46).
72	l. 31	read 'option for'
143	n. 184.	read 'Śabara' in line 3
147	l. 16	Add 'Bṛ. Saṁ. 23. 2 is: हस्तविशालं कुण्डकमधिकृत्याम्बुप्रमाणनिर्देशः। पञ्चाशत्पलमाढकमनेन मिनुयाज्जलं पतितम् ॥. उत्पल explains 'हस्तविशालं कुण्डकं वर्षति देवे संस्थाप्य तत्र यज्जलं पतति तन्मापयेत्। तद्यदि पलशतद्वयं भवति तदा द्रोणो वृष्टः'. On Bṛ. Saṁ. 21. 32 उत्पल quotes a verse of पराशर 'समे विंशाङ्गुलानाहे द्विचतुष्काङ्गुलोच्छ्रिते। भाण्डे वर्षति संपूर्णे ज्ञेयमाढकवर्षणम् ॥'. This shows the dimensions of a vessel used as a rainguage.
182	n. 230	read in line 3 राजधर्मकौ.
183	l. 34	read 'Rājadharmakaustubha'.
183	l. 38	" "
193	n. 250	read संभृतानि कनककरितुरग॰
227	n. 306	add at end 'Compare योगयात्रा 5. 15 'एकतश्च सकलानि निमित्तान्येकतश्च मनसः परिशुद्धिः। चेतसोऽस्ति रहयानरणे भीमांदलोऽपि विजयाजयहेतुः ॥'
242	l. 14	read 'Manu VIII. 1.' for 'Manu VIII. 1.'

Page	Line or note	
258	n. 335	read in last line स्मृतिच.
265	l. 20	read '*padas*'
379	n. 395	read सन्धेः
382	l. 6	read *patram...pratha*
405	last line	put a full stop after 'hanged',
414	n. 669	read ऋणमस्मिन्
423	n. 690	read गुणैर्व्येवस्था
533	n. 982	should we read वधमकुर्वन् for वधं कुर्वन् ?
538	n. 995	read in first line यूतं
542	n. 1009	read in second line यूतं
570	n. 1069	read पैतामहे
586	n. 1104	read in line 9 च for ज.
588	n. 1111	read in line 2 दुर्गादित्याह
605	n. 1142	put a full stop after बौधायन in l. 5.
"	"	read in line 9 निरिन्द्रिया ह्यमन्त्राश्च
627	n. 1197	read न त्वद्यत्वे अनुश्रेया
651	n. 1235	read in line 1 एक: एकोरस: and in line 2 वि. र.
659	n. 1248	read गौणपुत्राणां
"	n. 1250	read in line 2 कुर्वन्न
677	n. 1277	add at the end 'For the words शूर्पेण जुहोति शूर्पेण ह्यन्नं क्रियते' vide शतपथ ब्राह्मण II. 5. 2. 23; vide तै. ब्रा. I. 6. 4 for two वेदिs in वरुणप्रघास and बौ. श्रौ. 5. 5.
695	n. 1321	Add at end 'For अर्धम...बहिर्वेदि compare तै. सं. VI. 6. 4 and बौ. श्रौ. सू. 4. 2.
702	l. 27	read '(Śākuntala Act VI).
706	n. 1349	read पत्नीनामंशभागित्वम् .
"	l. 15	read 'her deceased sonless and separated husband's wealth'.

Page	Line or note	
751	l. 30	read after 'British rule' the words 'the widows of gotraja sapiṇḍas'.
776	n. 1499	read in l. 2 मूल्यत्वेन
781	n. 1509	read in last line स्वातन्त्र्येण
804	n. 1561	Add at the end 'Recently the Indian Legislature passed Act XIX of 1946 which confers on Hindu married women the rights to separate residence and maintenance as against the husbands in certain circumstances'.
846	l. 28	read 'mother'
897	n. 1762	read in line 7 'Institute' for 'Society'.
936	last line	read 'naugamanābhāve'.

RAJADHARMA

(GOVERNMENT AND STATECRAFT)

CHAPTER I

Rājadharma has been a subject of discussion in works on dharmaśāstra from very ancient times. The Āp. Dh. S. II. 9.25.1 says 'The general and special *dharmas* of all varṇas have been explained: but now we shall declare the dharmas of a king in particular'. Āp. then states that the king should cause to be built a capital and a palace, the gates of which both should face the south; that the palace should be in the heart of the capital; that in front of the capital there was to be a hall called 'āmantraṇa' (hall of invitation); that to the south of the town there was to be an assembly house with doors on the north and south. Āp. requires that in the king's realm no brāhmaṇa should suffer hunger, sickness, cold or heat; Āp. gives regulations about the assembly house and about persons who were to be allowed to engage in gambling; he prescribes that (the exercise in) arms, dancing, singing and music should not go on anywhere except in the houses of the king's servants, that the king was to see that there was no danger from thieves in villages and forests, that the king should donate fields and money to brāhmaṇas according to their worth without detriment to his servants, that the king who meets death in recovering the property of brāhmaṇas and other warlike persons who meet death in fighting for a similar worthy cause reap the merit of a sacrifice (i. e. reach heaven as reward); that the king should appoint in towns and villages officers and their subordinates, who are pure and truthful, for the protection of the subjects against thieves and who are to be made to make good what is stolen; that they are to collect lawful taxes for the king from the people except from learned brāhmaṇas, women of all castes, minors, students staying with teachers and ascetics fulfilling the rules of their order. śūdras who do menial work for the higher castes (such as washing their feet), persons that are blind, deaf or dumb. Āp. then lays down punishments for adultery and rape, for slander and defamation, for manslaughter. for theft and appropriation of another's land, for breach of contract to cultivate the field of another, for a herdsman leaving his herd or negligently allowing

it to perish. He states that if the king does not punish the guilty he incurs sin, that in disputes judges should be men of learning, clever and fulfilling their duties, that witnesses were to tell the truth and were to be punished if they be untruthful. It will be noticed how Āp. briefly covers the whole field of rājadharma. In the Śāntiparva of the Mahābhārata rājadharma is dealt with at great length in chapters 56–130 and to some extent in 131–172. The Manusmṛti also states at the beginning of chap. VII (1) that it will expound rājadharmas. That great literary activity on the science and art of government went on for many centuries before the Christian era follows from several considerations. The Anuśāsanaparva (chap. 39.8) speaks of the śāstras composed by Bṛhaspati and Uśanas. The Śāntiparva (58.1–3) names as expounders of *rājaśāstra* Bṛhaspati, Bharadvāja, Gauraśiras, Kāvya, Mahendra, Manu Prācetasa and Viśālākṣa. Śāntiparva (102.31–32) opposes the view of Śambara to that of ācāryas[1]. The Arthaśāstra of Kauṭilya mentions five schools (viz. those of the Mānavas, the Bārhaspatyas, the Auśanasas, the Pārāśaras and the Āmbhīyas), seven individual teachers (V. 5, and I. 8) only once (viz. Bāhudantīputra, Dīrgha Cārāyaṇa, Ghoṭamukha, Kaṇiṅka Bhāradvāja, Kātyāyana, Kiñjalka, Piśunaputra,) and several times mentions the views of Bhāradvāja, Kauṇapadanta, Parāśara, Piśuna, Vātavyādhi, Viśālākṣa. Kauṭilya also cites at least 53 times the views of ācāryas, almost in every case for dissent. Śānti 103.44 refers to a Bhāṣya on rājaśāstra. Is it possible to see in this a reference to one out of the bhāṣyakāras indicated in the verse appended at the end of the Kauṭilīya or to the Kauṭilīya itself? Another fact indicative of the systematization of the science of government is that in the Mahābhārata, the Rāmāyaṇa, Manu and Kauṭilya ideas expressed by numbers had already been stereotyped long before those works were written viz. such as saptāṅga rājya (State with seven constituent elements), ṣāḍguṇya (the six ways of policy viz. alliance, declaration of war &c.), three *śaktis*, the four upāyas (sāma, dāna, bheda, daṇḍa), aṣṭavarga, and pañcavarga (Manu VII. 155), the 18 and 15 tīrthas (Sabhāparva 5.38)[2]. For detailed information

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1. मन्यते कर्शयित्वा तु क्षमा साध्विति शम्बरः । असम्यक्तं तु यद्राज्ञ प्रत्येति प्रकृतिं पुनः ॥ नैतत्प्रशंसन्त्याचार्या न च साधुनिदर्शनम् । शान्ति 102. 31–32.

2. दशपञ्चचतुर्वर्गांस्सप्तवर्गं च तत्त्वतः । अष्टवर्गं त्रिवर्गं च विद्यास्तिस्रश्च राघव ॥ कृत्यं विंशतिवर्गंश्च तथा प्रकृतिमण्डलम् । अयोध्याकाण्ड 100. 68–69. दशवर्ग means the ten व्यसनs.

about the Rājaśāstras of Bṛhaspati, Uśanas, Bhāradvāja culled from the Mahābhārata and other ancient works *vide* my paper on them in the Journal of the University of Bombay, vol. XI part 2 pp. 73–83, 1942.

The fulfilment of their duties and responsibilities by rulers was of paramount importance to the stability and orderly development of society and to the happiness of individuals in the State and therefore one often finds that rājadharma is said to be the root of or the quintessence of all *dharmas*. Śāntiparva (63.25) states 'know that all dharmas are merged in rājadharma; that rājadharmas are at the head of all dharmas' and (141.9–10) 'the welfare, good rains, sickness, calamities and death among people owe their origin to the king[3]'. It was the king's duty to see that the people in his kingdom acted according to the rules laid down in the smṛtis for the several varṇas and āśramas, to administer justice and to interfere when his help was sought for by a *pariṣad* (assembly of learned men) in enforcing the *prāyaścitta* (penance) prescribed for various lapses. Vide Gautama X. 7–8, XI. 9–11, Āp. Dh. S. II. 5. 10. 13–16[4], Vasiṣṭha 19. 1–2, Viṣṇu III. 2–3, Nārada (prakīrṇaka, 5–7 and 33–34), Śāntiparva 77.33 and 57.15, Matsyapurāṇa 215.63, Mārkaṇḍeyapurāṇa 27.28 and 28.36 and H. Dh. vol. II. p. 965. Therefore it may be said with truth (as done by the Mahābhārata) that *rājadharma* was the highest goal of all the world, that it comprehended within itself all rules of *ācāra*, *vyavahāra* (administration of justice) and *prāyaścitta* (penance). It is on account of this all-pervading influence of government or royal power that the Mahābhārata frequently emphasizes that the king is the maker of his age, that it is he who can usher a golden age or an age of strife and misery for the country[5]. The Śukranītisāra (I.

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3. एवं धर्मान् राजधर्मेषु सर्वान्सर्वावस्थं संप्रलीनान्निबोध । ... सर्वा विद्या राजधर्मेषु युक्ताः सर्वे लोका राजधर्मे प्रविष्टाः । सर्वे धर्मा राजधर्मप्रधानाः । शान्तिपर्व 63. 25, 26, 29; राजमूला महाभाग योगक्षेमसुवृष्टयः । प्रजासु व्याधयश्चैव मरणं च भयानि च ॥ कृतं त्रेता द्वापरं च कलिश्च भरतर्षभ । राजमूला इति मतिर्मम नास्त्यत्र संशयः ॥ शान्ति 141. 9–10; सर्वस्य जीवलोकस्य राजधर्मः परायणम् । शान्ति. 56. 3.

4. आप. ध. सू. II. 5. 10. 13–16 तस्य चेच्छास्त्रमतिप्रवर्तेरन् राजानं गमयेत् । राजा पुरोहितं धर्मार्थकुशलम् । स ब्राह्मणान्नियुञ्ज्यात् । बलविशेषेण वधदास्यवर्जं नियमैरुपशोषयेत् ।

5. कालो वा कारणं राज्ञो राजा वा कालकारणम् । इति ते संशयो मा भूद्राजा कालस्य कारणम् ॥ उद्योग 132. 16 and शान्ति 69. 79; कृतं त्रेता द्वापरं च कलिश्च भरतर्षभ । राजवृत्तानि सर्वाणि राजैव युगमुच्यते ॥ ... राजैव कर्ता भूतानां राजैव च विनाशकः । शान्ति. 91. 6 and 9; तत्र चेत्संप्रमुह्येत धर्मे राजर्षिसेविते । लोकस्य संस्था न भवेत्सर्वं च व्याकुलीभवेत् ॥ शान्ति. 56. 6; युगप्रवर्तको राजा धर्माधर्मप्रशिक्षणात् । युगानां न प्रजानां न दोषः किन्तु नृपस्य तु ॥ शुक्रनीतिसार IV. 1. 60.

59-60) remarks that one should learn from śāstra what are good and evil actions, give up evil deeds and perform good ones and that the king is hence declared to be the cause of (good or evil) times according as he does good or evil acts. Śukra IV. 1. 60 states that the king is the prompter of his age.

Though rājadharma was thus an integral part of dharmaśāstra and was one of the most important subjects therein, yet apart from the works on dharmaśāstra separate treatises dealing with rājadharma alone came into existence in very early times. Śāntiparva (chap. 59) states that originally in the Kṛta age there was no king nor punishment, that then *moha* (delusion), greed and lust entered men, that in order to provide against the complete destruction of dharma, Brahmā composed a work in one hundred thousand chapters on dharma, artha, kāma and mokṣa (verses 30 and 79); that part of this work on Nīti (science of government) was abridged by Śaṅkara Viśālākṣa (verse 80, and so it was called Vaiśālākṣa) into 10000 chapters, that Indra studied it and reduced it to 5000 chapters (and the work was called Bāhudantaka, verse 83), that it was compressed into 3000 chapters by Bṛhaspati (and so was called Bārhaspatya) and that Kāvya (Uśanas) reduced the work to 1000 chapters. The Kāmasūtra (I. 5-8) contains a somewhat similar story that Prajāpati composed a work in one hundred thousand chapters, that Manu abridged it as regards dharma, Bṛhaspati as regards *artha* and Nandī abridged in 1000 chapters the science of erotics. The Śāntiparva (69) gives (verses 33-74) a summary of the contents of the work of Brahmā on rājadharma which remarkably agrees with the principal topics of the Kauṭilīya.

The Nītiprakāśikā (I. 21-22) states that Brahmā, Maheśvara, Skanda, Indra, Prācetasa Manu, Bṛhaspati, Śukra, Bhāradvāja, Veda-Vyāsa, Gauraśiras were the expounders of Rājaśāstra, that Brahmā composed a work on rājaśāstra in 100000 chapters, which was gradually reduced in size by each of the above-mentioned founders until Gauraśiras reduced it to 500 chapters and Vyāsa to 300. The Śukranītisāra (I. 2-4) states that Brahmā composed nītiśāstra in 100000 verses, which was subsequently abridged by Vasiṣṭha and others (including Śukra).

It is interesting to note the names given to the science of government. The most appropriate word is 'rājaśāstra' and it is employed by the Mahābhārata, which speaks of Bṛhaspati, Bharadvāja and others as 'rājaśāstra-praṇetāraḥ' (vide p. 2 above). The Nītiprakāśikā (I. 21-22) also dubs the divine and human

writers on government 'rājaśāstrāṇāṃ praṇetāraḥ.' The same word is employed by such ancient classical writers as Aśvaghoṣa in his Buddhacarita (I. 46).[6] The first verse in Prof. Edgerton's reconstructed Pañcatantra performs obeisance to Manu, Bṛhaspati, Śukra, Parāśara and his son and Cāṇakya as the authors of nṛpaśāstra (science of kingship). Another name is *Daṇḍanīti*. The Śāntiparva (59. 78) explains why Daṇḍanīti is so called viz. 'this world is led (on to the right path) by daṇḍa (the power of punishment, sanction) or this science carries (or sets forth) the rod of punishment; hence it is called daṇḍanīti and it (faces) pervades the three worlds.' In Śāntiparva 69. 76 it is stated that 'Daṇḍanīti controls the four varṇas so as to lead them on to the performance of their duties and when it is employed by the ruler properly, it makes them desist from adharma.'[7] Śānti 63. 28 identifies Daṇḍanīti with rājadharmas. The Kauṭilīya (I. 4) explains 'Daṇḍa is the means of the stability and welfare of Ānvīkṣikī, Trayī (the three Vedas) and Vārtā; the rules that treat of daṇḍa are called daṇḍanīti, which is a means of acquiring what has not been acquired, which safeguards what is acquired, which increases what is guarded and distributes (increased wealth) among the deserving.[8] The Mahābhārata says (Śānti 69. 102) that a wise kṣatriya, putting daṇḍanīti in front, should always desire to acquire what is till then unacquired and should guard what is acquired.[9] The Nītisāra (II. 15) says that *dama* (control or chastisement) is called daṇḍa, the king is called 'daṇḍa' because control is centered in him; that the nīti (rules) of daṇḍa is called daṇḍanīti and nīti is so called because it leads (people).'[10] Śānti (69. 104) says that daṇḍanīti is the special concern of the kṣatriya (rājan). It is said in the Vanaparva 150. 32 that without Daṇḍanīti this

6. यद्राजशास्त्रं भृगुरङ्गिरा वा न चक्रतुर्वंशकरावृषी तौ । तयोः सुतौ तौ च ससर्जतुस्तत्कालेन शुक्रश्च बृहस्पतिश्च ॥ बुद्धचरित I. 46.

7. दण्डेन नीयते चेदं दण्डं नयति वा पुनः । दण्डनीतिरिति ख्याता त्रीँल्लोकानभिवर्तते ॥ शान्तिपर्व 59. 78; दण्डनीतिः स्वधर्मेभ्यश्चातुर्वर्ण्यं नियच्छति । प्रयुक्ता स्वामिना सम्यगधर्मेभ्यो नियच्छति ॥ शान्ति. 69. 76. स्वधर्मेभ्यः is in the dative and अधर्मेभ्यः in the ablative.

8. आन्वीक्षिकीत्रयीवार्तानां योगक्षेमसाधनो दण्डः । तस्य नीतिर्दण्डनीतिः । अलब्धलाभार्था लब्धपरिरक्षणी रक्षितविवर्धनी वृद्धस्य तीर्थेषु प्रतिपादनी च ॥ अर्थशास्त्र I.4 (p. 9).

9. दण्डनीतिं पुरस्कृत्य विजानन् क्षत्रियः सदा । अनवाप्तं च लिप्सेत लब्धं च परिपालयेत् ॥ शान्ति. 69.102.

10. दमो दण्ड इति ख्यातस्तात्स्थ्याद्दण्डो महीपतिः । तस्य नीतिर्दण्डनीतिर्नयनान्नीतिरुच्यते ॥ नीतिसार II. 15 and शुक्र० I. 157 (latter reading तस्माद्दण्डो &c.)

whole world would break all bounds. Vide also Śānti 15.29, 63.28, 69.74 ff (eulogy of Daṇḍanīti). Daṇḍanīti is said to be the support of the world (Śānti 121.24) and to have been produced by Devī Sarasvatī (Śānti 122.25.)

Arthaśāstra has been a synonym for daṇḍanīti. When the Āp. Dh. S. II. 5.10.16 requires the king to appoint as purohita a brāhmaṇa well-versed in dharma and artha, it is clear that Āpastamba has in view dharmaśāstra and arthaśāstra. The Anuśāsanaparva says that Bṛhaspati and others composed arthaśāstras (39.10–11). Droṇaparva 6.1 speaks of a science of artha composed by Manu (*Mānavī arthavidyā*). Vide Jayaswal in 'Manu and Yājñavalkya' (pp. 5, 7, 16, 25, 26, 41, 42, 50, 84, for Manu and Artha). Śānti (71.14) states that a king whose sole concern is with arthaśāstra does not secure dharma and kāma and that all the wealth of such a king vanishes in (the pursuit of) improper objects. Vide Śānti 302. 109 which speaks of arthaśāstra as resorted to by the best among kings. The Rāmāyaṇa (II. 100. 14) states that Sudhanvā, Upādhyāya of Rāma, was an adept in arthaśāstra. The arthaśāstra of Kauṭilya starts with the statement that it is the quintessence of all the arthaśāstras composed by former teachers in the whole world and at the end Kauṭilya states that that śāstra which is a means of acquiring and guarding the earth is arthaśāstra. This mentions two of the four objects of daṇḍanīti stated in the Kauṭilīya itself (as shown in *n.* 8 above). Only two objects are mentioned by Kauṭilya (as in Śānti 69. 102) since they are the first and principal ones to be gained by the practice of the science of government. It is not meant that there was, as regards the topics to be dealt with, any distinction between Daṇḍanīti and Arthaśāstra. The four objects mentioned by Kauṭilya are always placed before the kṣatriya by Manu (VII. 99–100), Śānti 102. 57 and 140. 5, Yāj. I. 317, Nītisāra I. 18 (while I. 8 mentions only two purposes of rājavidyā). At the end (XV. 1) Kauṭilya states '*artha* is the sustenance of human beings, that is, the earth peopled by men That śāstra which is a means of acquiring and guarding that earth is arthaśāstra.' Men derive their sustenance from the earth and all wealth also arises from the earth. Mr. Jayaswal (Hindu Polity p. 5) is not right when he translates 'Artha is human population.' Vide U. Ghoshal's 'Hindu Political Theories' p. 74 n and p. 76 for the various interpretations of this passage by Jayaswal and others. Authors a few centuries later than both the Mahābhārata and the Kauṭilīya treat the two as

identical. Daṇḍin in his Daśakumāracarita (VIII.) expressly says that Viṣṇugupta composed his work on daṇḍanīti for the Maurya king in 6000 ślokas, though the Kauṭilīya states at the very beginning that the work is an arthaśāstra. Daṇḍin in the same context refers to 'Arthaśāstras as helping to polish the intellect' and speaks of some of the predecessors mentioned by Kauṭilya as writers on the śāstra (viz. the Arthaśāstra).[11] The Amarakośa treats the two as identical.[12] Medhātithi on Manu VII. 43 holds that the word 'Daṇḍanīti' therein refers to the works of Cāṇakya and others. The Mitākṣarā on Yāj. I. 313 paraphrases daṇḍanīti by arthaśāstra and on Yāj. I. 311 explains daṇḍanīti as the lore useful in the acquisition and guarding of wealth (only the two objects mentioned by Kauṭilya in connection with arthaśāstra). According to the Śukranītisāra (IV. 3.56) 'that is said to be arthaśāstra in which instruction about the conduct of kings and the like is given without coming in conflict with Śruti and Smṛti and in which the acquisition of wealth with great skill is taught'.

The words arthaśāstra and daṇḍanīti are applied to the science of government from two different points of view. Artha is defined in the Kāmasūtra (I. 20) as 'education, lands, gold, cattle, corn, domestic utensils and friends and the augmenting of what is acquired' (vide H. Dh. Vol. II part I. p. 9 note 22). Therefore when wealth and prosperity of all kinds is the spring and motive of giving a name the science treating of these is called arthaśāstra and when the government of the people and the punishment of offenders are the main ideas the same is called daṇḍanīti. Though works like Kauṭilya's Arthaśāstra place a high value on dharma they are principally concerned with the treatment of central and local government, taxation, the employment of *sāma* and other upāyas, with alliances and wars, appointment of officers and punishment. Therefore Arthaśāstra is mainly what is called *dṛṣṭārtha* smṛti, as stated by the Bhaviṣyapurāṇa (quoted by Aparārka p. 626, the Smṛticandrikā p. 24, vyavahāra and Vīramitrodaya, *paribhāṣā* p. 19). Medhātithi on Manu VII. 1 explains that dharma in that verse means

11. अधीष्व तावद्दण्डनीतिम् । इयमिदानीमाचार्यविष्णुगुप्तेन मौर्यार्थे षड्भिः श्लोकसहस्रैः संक्षिप्ता । ...... येऽपि मन्त्रकर्कशाः शास्त्रतन्त्रकाराः शुक्राङ्गिरसविशालाक्षबाहुदन्तिपुत्रपराशरप्रभृतयः &c. । दशकुमारचरित VIII. pp. 131 and 133 (B.S. Series edition).

12. आन्वीक्षिकी दण्डनीतिस्तर्कविद्यार्थशास्त्रयोः । अमरकोश (शब्दादिवर्ग). क्षीरस्वामी derives 'दम्यतेऽनेन दमनं वा दण्डः स नीयते दम्ये प्रति प्राप्यते यया सा दण्डनीतिरर्थशास्त्रम् ।

'duties' (dharmaśabdaḥ kartavyatāvacanaḥ), that the duties of the king are either dṛṣṭārtha (i. e. the effects of which are worldly and visible) such as the employment of six *guṇas* (sandhi, vigraha &c.) or adṛṣṭārtha (that have no visible effect but have a spiritual result) such as Agnihotra; here (in chap. VII–IX of Manu) the remarks relate principally to dṛṣṭārtha matters since it is well-known that the word *rājadharma* is applicable to such matters (the six guṇas &c.) only.[13] Medhātithi here declares that the rules of rājanīti are not based on the canonical books of dharmaśāstra but principally on the experience of worldly affairs.

Another name for the science of government is Nītiśāstra or Rājanītiśāstra. Śānti[14] 59. 74 says that in the nītiśāstra are set forth all those means whereby people are prevented from forsaking the right path. The Nītisāra of Kāmandaka[15] (1. 6) does obeisance to Viṣṇugupta who extracted the nectar of Nītiśāstra from the vast ocean of Arthaśāstra (works). The Pañcatantra p. 2 holds that Arthaśāstra and Nītiśāstra are synonymous. The Mitākṣarā on Yāj. II. 21 remarks that the arthaśāstra referred to by Yāj. is rājanītiśāstra that is part and parcel of dharmaśāstra. The word 'rājanīti' occurs in Raghuvaṁśa 17.68. Vide Bhagavadgītā X. 38, Āśramavāsikaparva 6.5, Manu VII. 177, Śānti 111. 73, 138,39, 43 and 196, 268.9 and Anuśāsana 163.7 for Nītiśāstra meaning Arthaśāstra or Rājanīti and Droṇa 152.29 and Śānti 37.9 for the word rājanīti. Another noteworthy word is 'naya' which means 'line of policy' and is employed by the Arthaśāstra (I. 2) when it says 'naya and anaya (bad policy) are treated of in Daṇḍanīti'. It is also used in several classical works, such as the Kirātārjunīya (II. 3, 12, 54, XIII. 17).

The relation of arthaśāstra to dharmaśāstra has now to be understood. As stated above rājadharma is a very important subject of dharma-śāstra. Arthaśāstra which is principally concerned with the rights, privileges and responsibilities of the ruler is therefore properly speaking a part of dharmaśāstra. As shown above it is supposed to have

13. धर्मशब्दः कर्तव्यतावचन इत्युक्तम् । ... कर्तव्यं च दृष्टार्थं षाड्गुण्यादि । अदृष्टार्थमग्निहोत्रादि । तत्रेह प्राधान्येन दृष्टार्थ उपदिश्यते । तत्रैव च राजधर्मप्रसिद्धिः । मेधा० on मनु VII. I.

14. यैर्यैरुपायैर्लोकस्तु न चलेदार्यवर्त्मनः । तत्सर्वं राजशार्दूल नीतिशास्त्रेऽभिवर्णितम् ॥ शान्ति. 59. 74.

15. नीतिशास्त्रामृतं धीमानर्थशास्त्रमहोदधेः । समुद्दध्रे नमस्तस्मै विष्णुगुप्ताय वेधसे ॥ कामन्दकीयनीतिसार I . 6.

like dharmaśāstra a divine source. But works on arthaśāstra enter into great details about the government of a country in all its aspects, while dharmaśāstra works generally deal only with a few salient features of rājaśāstra. Just as the Kāmasūtra (I. 2. 14) states that dharma is the highest goal and kāma is the lowest of the three puruṣārthas (vide H. Dh. vol. II part 1 p. 9), so Arthaśāstra also sets the highest value on dharma. The Kauṭilīya states (III. 1. at end)[16] 'In any matter where there is a conflict between dharmaśāstra and practices or between dharmaśāstra and any secular transaction, (the king) should decide that matter by relying on dharma. If śāstra comes in conflict with any rational and equitable rule then the latter shall be the deciding factor and the (strict) letter of the text will be nowhere'. But Kauṭilya and other writers on arthaśāstra lay the greatest emphasis on artha. In the eager and relentless pursuit of worldly prosperity means may be recommended or followed which may come in conflict with the strictly ethical standpoint of the dictates of dharmaśāstra. In such cases of conflict dharmaśāstra works lay down (e. g. Āp. Dh. I.9. 24. 23, Yāj. II. 21, Nārada, vyavahāramātṛkā chap. I 39) that dharmaśāstra rules are to be preferred to the dictates of arthaśāstra. Viśvarūpa (on Yāj. II. 21) states that according to some predecessors of his the conflict between the dictates of dharmaśāstra and arthaśāstra is illustrated as follows. Manu VIII. 351 (which is the same as Viṣṇu-dharmasūtra V. 190 and Matsyapurāṇa 227. 116–117) when dealing with vyavahāra (a subject that pre-eminently belongs to arthaśāstra) provides that in killing an *ātatāyin*, no fault attaches to the killer : while Manu XI. 89 in the chapter on prāyaścittas (which is pre-eminently a topic of dharmaśāstra) states that no penance is prescribed (i. e. there is no prāyaścitta for removing the guilt) when a person of set purpose kills a brāhmaṇa. The result is that the latter rule prevails and sin is incurred by killing a brāhmaṇa even if the latter be an ātatāyin (though there may be no punishment by the king). Viśvarūpa does not accept

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16. संस्थाया धर्मशास्त्रेण शास्त्रं वा व्यावहारिकम् । यस्मिन्नर्थे विरुध्येत धर्मेणार्थं विनिश्चयेत् ॥ शास्त्रं विप्रतिपद्येत धर्मन्यायेन केनचित् । न्यायस्तत्र प्रमाणं स्यात्तत्र पाठो हि नश्यति ॥ कौटिलीय III. 1. p. 150. Prof. K.V. Rangaswami Aiyangar gives two inconsistent translations of these verses at pp. 54, 170 of his 'Ancient Indian Polity' (1935). धर्ममूलत्वात्कामफलत्वाच्चार्थस्य धर्मार्थकामानुबन्धायार्थस्य सिद्धिः सा सर्वार्थसिद्धिः । कौटिलीय IX. 7. p. 362.

this illustration. The Mitākṣarā also refers to this example, disapproves of it and gives its own example. The Arthaśāstra declares that a king should endeavour to secure friends, since the acquisition of friends is superior to the acquisition of gold and land (as is laid down in Yāj. I. 352). The rule of dharmaśāstra is that a king has to dispense justice, being free from anger and avarice and in accordance with dharmaśāstra. Therefore when a suit comes before a king he must decide it according to law, even though he may lose the friendship of a person if his decision goes against the latter. The Vīramitrodaya follows the Mitākṣarā. Dharmaśāstra went by the name of smṛti (Manu II. 10), while arthaśāstra was treated as an Upaveda. The Viṣṇupurāṇa III. 6. 28, Vāyu 61. 79 and Brahmāṇḍa 35. 88-89 mention the four Upavedas[17] viz. Āyurveda, Dhanurveda, Gāndharvaveda and Arthaśāstra as affiliated to the four Vedas respectively viz. Ṛgveda, Yajurveda, Sāmaveda and Atharvaveda. Kauṭilya (I. 5) states that the king should listen to the recital of *itihāsa* in the latter part of the day and includes both dharmaśāstra and arthaśāstra under itihāsa[18] and requires the minister knowing arthaśāstra to advise the king (with examples and precepts derived) from itihāsa and purāṇa.

Though Arthaśāstra is in theory for keeping to the path of dharma, one cannot blink one's eyes to the fact that the Mahābhārata and the Kauṭilīya both support in several places the adoption of means entirely divorced from all rules of fair dealing and morality. In Ādiparva 140 we have a discourse by Kaṇika said to have been a *mantrin* of Dhṛtarāṣṭra and a profound student of Rājaśāstra, which is almost on the same lines as Śāntiparva chap. 140 where Bhīṣma sets out what lines of policy (*nīti*) should be followed by the ruler in adversity and how he should give up all thoughts of kindliness in such straits. He is supposed to give the substance of the dialogue between the sage Bhāradvāja and Śatruntapa, king of Sauvīra. The whole chapter is full of Machiavellian advice. A few specimens may be set out here. One should be very courteous in speech, but like a razor at heart (verse 13); one desirous of prosperity may fold one's hands, may take an oath, may use

17. आयुर्वेदो धनुर्वेदो गान्धर्वश्चेति ते त्रयः । अर्थशास्त्रं चतुर्थं च विद्या अष्टादशैव ताः ॥ विष्णुपुराण III. 6. 28 quoted by अपरार्क p. 6.

18. पश्चिममितिहासश्रवणे । पुराणमितिवृत्तमाख्यायिकोदाहरणं धर्मशास्त्रमर्थशास्त्रं चेतीतिहासः । कौटिलीय I. 5. p. 10.

sweet words, place his head on another's feet and even shed tears, one may carry on one's shoulders one's enemy till one accomplishes one's object and when a fit opportunity arises should break him like an earthen pot on a stone (17-18); the king should raise hopes promising their fulfilment at a distant day, but should put obstacles in the fulfilment of the hopes raised in others (32); when one is reduced to a wretched state one may extricate oneself from it by any act whatever whether gentle or horrible and practise dharma after one becomes able to do so (38); one should inspire confidence in one's enemy by some means which appear to be true (to the enemy), but one should strike him down at the right moment when he takes a wrong step (44); whoever causes obstacles to the purpose of the king, whether son or brother or father or friend, should be killed by the king who desires to prosper (47); without cutting the vitals of others, without committing horrible deeds and without killing indiscriminately as the fisherman in the case of fish one does not secure high prosperity (50); when about to strike one should utter sweet words and even after striking one should use honeyed words; even after severing another's head with a sword one should lament and shed tears (54); if some remainder is left in the case of a debt or fire or enemies, there is a tendency to grow and so no remainder should be left of these (58). It is to be noted that this chapter deals specially with what should be done in difficulties and cannot be supposed to be the real teaching of the Mahābhārata which is generally in line with the higher code of dharmaśāstra. It embodied probably the words of earlier arthaśāstra writers like Bhāradvāja. After hearing this discourse on calculated cruelty and deceit Yudhiṣṭhira stood aghast and frankly told Bhīṣma that the course of conduct outlined by him did not differ from that of robbers and that he felt bewildered and would not exert himself in the way pointed out. In chap. 142 Bhīṣma replies to this by saying that he did not base his discourse merely on the sacred texts, but also on reason and the essence was distilled by wise men, that the considered rule of conduct for the king is twofold, viz. straightforward and crooked, that one should not ordinarily employ the crooked course of conduct, but should employ it as against an enemy who employs a crooked policy and effectively meet him by such policy. He further says that *rājadharma* cannot be based on a single source (v. 7) and that policies are to be pursued not merely by reliance on the sacred codes of law but on reason as well

(v. 17) and that Indra himself has declared this rule which he derived from Bṛhaspati. In Śānti-parva a weak king is advised to harass a very powerful ruler's state by sword, fire and poison. In chap. 130 it is stated that the preservation of the state is the paramount consideration and that a king whose treasury is depleted and who is therefore in difficulties may replenish his treasury even by harassing his subjects (except *tāpasas* and learned brāhmaṇas). In chap. 138 it is said that self-interest makes friends or foes and that *aviśvāsa* (putting trust in no one) is the grand line of policy for kings. So it is clear that the Mahābhārata was prepared to give up in certain circumstances the strict rules of dharmaśāstra for kings and to allow them to pursue devious modes of action that were far from moral i. e. it tries to effect a synthesis of dharmaśāstra and arthaśāstra.

The Kauṭilīya also discloses how arthaśāstra writers did not shrink from giving advice which, to say the least, was most cruel, selfish and immoral. For example, in the section called 'guarding the prince' (Kauṭ. I. 17) the views of several teachers are set out. Bhāradvāja says that princes are of the nature of crabs eating up their parent; so it is better to finish them in secret when they have no love for their father. Viśālākṣa abhorred this advice as cruel, as unsanctioned murder and as destructive of the seed of kṣatriyas and recommended that it was better to keep them confined in a single spot. Vātavyādhi recommended that princes should be made addicted to sensual excesses. Kauṭ. disapproves of this as living death (for the princes), recommends proper care before conception and after birth and instruction in dharma. In Kauṭ. V. 6 Bhāradvāja is quoted as saying that when the king is on his death-bed, the minister may set up the kinsmen of the king and the principal princes against one another, that whoever attacks should be killed by inciting the people against him, or having secretly punished the kinsmen and chief princes and brought them under control, the minister should himself take possession of the kingdom. Kauṭilya does not approve of this. But even he advises (XIV Aupaniṣadika) the employment of poison, herbs and incantations against those who are irreligious or wicked. In I. 18 even Kauṭ. does not shrink from advising that secret emissaries (of the reigning king) may kill an abandoned prince with weapons and poison and in V. 1 Kauṭ. remarks that, when a king cannot openly put down the principal courtiers or chiefs

who are dangerous to the kingdom, he may inflict punishment on them in secret or may induce the brother of the officer to be punished to attack the latter by promising to give him the position and wealth of the officer and then destroy that attacker with weapons or poison saying that he was guilty of fratricide. In V. 2 for replenishing a depleted treasury Kauṭilya coolly asks the king to deprive the temples in the kingdom of their wealth through the superintendent of religious endowments.

Sanskrit literature on rājadharma is very extensive. Apart from the meagre materials contained in such ancient dharmasūtras as that of Āpastamba, the following works deserve close study and have been utilized in this section; the Mahābhārata (Vanaparva 150, Sabhā 5, Udyoga 33-34, Śānti 1-130, Āśramavāsika 5-7), the Rāmāyaṇa (Ayodhyā, chap. 15, 67, 100; Yuddha 17-18, 63), Manusmṛti VII-IX, Arthaśāstra of Kauṭilya (which is the leading work on rājadharma), Yāj. I. 304-367, Vṛddha-Hārītasmṛti chap. VII. verses 188-271, Bṛhat-Parāśara chap. X.pp. 277-285, Viṣṇudharmasūtra III, the Nītisāra of Kāmandaka, Agnipurāṇa chap. 218-242, Garuḍapurāṇa 108-115, Matsya 215-243, Viṣṇudharmottara II, Mārkaṇḍeya 24, Kālikā 87, the Nītiprakāśikā attributed to Vaiśampāyana (ed. by Oppert), Śukranītisāra (ed. by Jīvānanda, 1890), the Abhilaṣitārthacintāmaṇi or Mānasollāsa (first four viṁśatis) of Someśvara, Yukti-kalpataru of Bhoja, Nītivākyāmṛta of Somadeva (959 A. D.), Bārhaspatyasūtra (ed. by Dr. F.W. Thomas), the Rājanītikāṇḍa of the Kṛtyakalpataru of Lakṣmīdhara (edited from a single ms. by Jagadish Lal Shastri at Lahore, 1942), Rājanīti-ratnākara of Caṇḍesvara, Rājanītiprakāśa of Mitramiśra, Nītimayūkha of Nīlakaṇṭha, Rājadharmakaustubha of Anantadeva, Budhabhūṣaṇa of Prince Sambhāji (between A. D. 1675-1680, ed. by Prof. H.D. Velankar), Daṇḍanīti of Keśavapaṇḍita (edited by V. S. Bendrey, Poona, 1943). In recent times there is a deluge of works mostly inspired by the publication of the Kauṭilīya dealing with ancient and medieval Indian polity in its various branches. The most important of these and a few other works independent of Kauṭilya are mentioned in the note below.[19]

19. Some parts of the Śāntiparva may be later than Kāmandaka's work, since Śānti (123. 11-12) refers to the dialogue of Kāmandaka and Āṅgariṣṭha king of Aṅga. But it need hardly be said that it is not absolutely necessary to hold that the extant Nītisāra of Kāmandaka is referred to by Śāntiparva.

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It would be impossible to go into all details about Government and Politics within the space at my disposal. What is

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The reference may be only to a legend. The modern works referred to above are:—' Some Aspects of Ancient Indian Polity' (1935) and ' Rājadharma ' (1941) by Rao Bahadur K. V. Rangaswami Aiyangar; ' The Nature and grounds of political obligation in the Hindu state' by J. J. Anjāria (1935); ' Development of Hindu polity and Political Theories ' (Calcutta, 1929) by N. C. Bandopadhyaya; " Public Administration in Ancient India " (1916) by Dr. P. N. Bannerjea; ' Some Aspects of ancient Hindu Polity' (1921) by Prof. D. R. Bhandarkar; ' The theory of Government in Ancient India ', (1927) and ' The State in Ancient India ' (1928) by Dr. Beni Prasad; ' Buddhist India ' (1903) by Rhys Davids; ' Hindu Administrative Institutions ' (Madras, 1929) and ' Mauryan Polity ' (Madras, 1932) by Prof. V. R. Ramchandra Dikshitar; ' History of Hindu Political Theories ' (2nd ed. Calcutta, 1927) by U. Ghoshal; Prof. E. W. Hopkins' ' Position of the Ruling Caste in Ancient India ' in Journal of the American Oriental Society, vol. XIII. pp. 57-372; ' Hindu Polity ' (1924) by K. P. Jayaswal; ' Administration and Social Life under the Pallavas ' (1938) by Dr. C. Minakshi; ' Studies in Ancient Hindu Polity ' (vol. 1, 1914), ' Inter-state Relations in Ancient India ' (London, 1920), ' Aspects of Ancient Indian Polity ' (Oxford, 1921), ' Studies in Indian History and Culture ' (1925) by Dr. Narendranath Law; ' Corporate Life in Ancient India ' (Calcutta, 1919) by Dr. R. C. Majmudar; ' Local Government in Ancient India ' (1919) by Dr. Radhakumud Mukerjee; ' Study in the Economic condition of Ancient India ' by Dr. Pran Nath; ' Positive Background of Hindu Sociology ' (Allahabad, 1914) and ' The Political Institutions and Theories of the Hindus ' (1922) by Prof. Benoy Kumar Sarkar; ' Sovereignty in Ancient Hindu Polity ' by Dr. H. N. Sinha (London, 1938); ' International Law in Ancient India ' by Prof. S. V. Visvanathan. I have to make general acknowledgments to these works for much useful information, particularly to those of K. P. Jayaswal and N. N. Law. For a list of Mss. on Polity or its sub-topics, vide N. N. Law's articles in Modern Review for October 1917 to January 1918 and March and June 1918 and for a list of available Mss. and printed works on ' *Vārtā* ' (economics) vide the same writer's ' Studies in Indian History and Culture ' pp. 384 ff. In my treatment of *rājadharma* I have generally restricted myself to data derived from Sanskrit works on dharmaśāstra and arthaśāstra and have rarely ventured into works in Pāli. Similarly it has to be borne in mind that the works referred to cover a period of several centuries and further that India is not one country but a continent of which northern India formed one more or less homogeneous unit, while the Deccan formed another and South India formed a third unit. The institutions of these, particularly of the last of the three, differ in many particulars from those of the other two. But the authentic data furnished by South India are later by centuries than those supplied by the north and besides are comparatively meagre. Therefore in this work one has to confine oneself principally to Sanskrit works composed in North India or the Deccan.

proposed is to indicate and dilate upon only the fundamental ideas and principles of the several matters falling under rājadharma. Nor is it possible to enter here into formal and lengthy refutations of the several views propounded by Western and Indian writers about the forms and functions of Government and the state of society in ancient India. Most of the modern works referred to in note 19 above are more or less based on the same material in Sanskrit and Pāli, but the emotional or subjective element is different in each case. Some western writers have without very solid foundations indulged in a facile and sweeping generalization that the great Empires of antiquity such as those of the Assyrians, the Babylonians, the Medians and Persians and the Indians were mainly tax-gathering institutions (vide Sir Henry Maine's 'Early History of Institutions' 1875, pp. 384 and 390; and Prof. Rangaswami Aiyangar's 'Ancient Indian Polity' 1935, pp. 5–6 and pp. 66–69 (where passages from T. H. Green and others are cited); while some Indian writers vehemently assert that the Government in Ancient India was always some form of limited monarchy. Both characterisations are in my opinion misleading. An endeavour will be made to present from the original texts as true a picture of the polity of ancient and medieval India as it is possible for me to do. It will do no good to label the ancient institutions of India with concepts and terms current in the West during the last one hundred and fifty years or so. Even in the West true democracies or real democratic governments did not exist and the masses in no country had elective popular assemblies or councils before the last quarter of the 18th century. Such assemblies do not exist even now in several countries of Europe. Even in the ancient Greek city states the number of slaves who had no voice in the government was several times as large as the free citizens and those states were no democracies at all in the strict sense.[19a] Indian polity has a recorded history of over two thousand years from at least the 4th century B. C. Its growth was gradual but its aims and ideals and its main elements have been the same throughout the centuries. India need not feel ashamed or fear

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19a. Berolzheimer in 'the World's Legal Philosophies' (tr. by Jastrow, New York, 1929) p. 62 remarks 'Plato approved of slavery unreservedly, finding it a necessary condition for the maintenance of the proper status of the citizen. ... Thus in the maritime and industrial states there was a large slave class; in Corinth, 460000; Aegina, 470000; in Attica (according to the census of 309 B. C.) 400000'.

a comparison of its ideals and theories of State with the ideals and theories of western countries in ancient and medieval times. If western countries could boast of so-called republics and city states in ancient Greece and Rome, India also had several republics in ancient times. The ancient Hindus made their own contributions to political thought, though unfortunately Western scholars of the 19th century like Max Müller, Weber and Roth were concerned most with the Vedic and allied literature and either did not know or ignored the vast literature on politics contained in Sanskrit and Pāli works. Vide 'Some Aspects of ancient Hindu Polity' by Prof. D. R. Bhandarkar (1929) pp. 2-3 for views of Max Müller and others and criticism thereof, also Dr. Beni Prasad's 'Theory of Government &c.' p. 1, U. Ghoshal 'History of Hindu Political Theories' pp. 3-4.

CHAPTER II.

SEVEN AṄGAS OF RĀJYA

According to almost all of our authorities a state (*rājya*) is constituted by seven elements[20] viz. *svāmin* (ruler or sovereign), *amātya* (minister), *janapada* or *rāṣṭra* (the territory of the State and its people), *durga* (fortified city or capital), *kośa* (accumulated wealth in the ruler's treasury), *daṇḍa* (army), *mitra* (friends or allies).' These seven are called *aṅgas* or *prakṛtis*. The word prakṛti in works on politics is also used for the constituents of a circle of states (of a maṇḍala). Vide Manu VII. 156 and Kauṭilya (VI.2). The word also means ministers as in Śukranītisāra II. 70-73 and 'subjects' in Khāravela's Inscription (E. I. vol. 20 p.79 l. 4), Nārada (prakīrṇaka 5), Raghuvaṁśa VIII. 18. The order in which these are arranged and their names vary a good deal. The quotations given below will indicate how the order differs. The sequence is important for the reason that some of our authorities expressly state that when calamities befall or deterioration sets in each of the seven elements, those that befall each preceding one are more serious for the State than those of each succeeding one (Kauṭilya VIII. 1, Manu IX. 295). For *janapada* sometimes the word *jana* or *rāṣṭra* is used, for 'daṇḍa' the word 'bala' and the word 'pura' for 'durga'. The Āśramavāsiparva (5.8) speaks of eight angas of *rājya*. According to Sumantu quoted by the Sarasvatīvilāsa (p. 46) *daṇḍa* means "punishment bodily or monetary" and 'army' is included under 'kośa'. Sumantu says that th e*svāmin* has to be preserved by himself, the ministers by showing them proper respect, the people by keeping them contented, the fortified capital by abundance of wealth and grain, the kośa by proper expenditure, daṇḍa

20. स्वाम्यमात्यजनपददुर्गकोशदण्डमित्राणि प्रकृतयः। कौ. VI. 1, p. 257; स्वाम्यमात्यौ जनो दुर्गं कोशो दण्डस्तथैव च। मित्राण्येताः प्रकृतयो राज्यं सप्ताङ्गमुच्यते ॥ याज्ञ. I. 353; स्वाम्यमात्यौ पुरं राष्ट्रं कोशदण्डौ सुहृत्तथा। सप्त प्रकृतयो ह्येताः सप्ताङ्गं राज्यमुच्यते ॥ मनु IX. 294; स्वाम्यमात्यदुर्गकोशदण्डराष्ट्रमित्राणि प्रकृतयः। विष्णुधर्मसूत्र III. 33; स्वाम्यमात्यसुहृद्दुर्गकोशदण्डजनाः। गौतमसूत्र quoted in सरस्वतीविलास p.45. Vide also शान्ति 69. 64-65, मत्स्य 225. 11 and 239, अग्निपुराण 233. 12, कामन्दक I. 16 and IV. 1-2. The application of the word प्रकृति to these is lucidly explained by Aparārka (p. 588) यतः कार्यमुत्पद्यतेऽवतिष्ठते नियमेन भवति सा प्रकृतिः। यथा हिरण्यं कुण्डलस्य। राज्यं च विना स्वाम्यादिभिर्नोत्पद्यते, उत्पन्नमपि न तैर्विना चिरकालमनुवर्तते। ततो भवन्ति स्वाम्यादयो राज्याङ्गानि।

by following one's dharma, friends by truthfulness. The authorities are agreed that the ruler is the most important or the first of the seven. Kauṭilya puts the matter very forcibly and realistically when he states that the briefest exposition of the elements of *rājya* is to say that the king is the State[21]. This is really not the same doctrine as that emphasized by Louis XIV of France when he said '*L'Etat c'est moi*'. Kauṭilya makes his position clear (in VIII. 1) by saying that it is the king who appoints ministers and servants and superintendents, who takes measures of relief against calamities befalling the other prakṛtis and measures of prosperity, that it is he who appoints other ministers when those already appointed are under calamities, that if the ruler is prosperous he transmits prosperity to his prakṛtis, that the prakṛtis bear that character which the king has and that hence the ruler occupies the position of a permanent, never-exhausted centre of power. The Śukranītisāra II.4 remarks that if the king begins to act at his sweet will, it leads to calamities, to loss of ministers and of the kingdom. The Śukranītisāra (I. 61-62) compares the seven aṅgās of rājya to the organs of the body viz., the king is the head, the ministers are the eyes, ally the ear, treasury the mouth, the army the mind, capital and rāṣṭra are hands and feet. It is emphasized by Kām. (IV.1-2) that each of the seven elements is complementary to the others, that if the state is defective even in one out of the seven elements it does not pull well. the] Śāntiparva it is stated that it is not possible to say categorically that any one of the seven excels the others in merit, but that at different times a different element assumes importance over others, since that particular element is in the particular circumstances capable of accomplishing the purpose in hand. This shows that Manu and the Mahābhārata held that there was an organic unity in the several elements of rājya. All must work harmoniously towards one ideal or end. Manu (IX. 296-297) says this by means of a simile 'Just as among the three staves tied together (by a rope of cow's hair) used by a *sannyāsin* no particular staff is superior (to the others), so among

21. राजा राज्यमिति प्रकृतिसंक्षेपः । कौटिल्य VIII. 2; तत्कूटस्थानीयो हि स्वामीति । कौ. VIII. 1; सप्ताङ्गमुच्यते राज्यं तत्र मूर्धा नृपः स्मृतः । दृगमात्यः सुहृच्छ्रोत्रं मुखं कोशो बलं मनः । हस्तौ पादौ दुर्गराष्ट्रौ (?)—शुक्रनीति I. 61-62; सप्तांगस्यापि राज्यस्य मूलं स्वामी प्रकीर्तितः । राजनीतिप्र. p. 123; सप्ताङ्गस्यास्य राज्यस्य त्रिदण्डस्येव तिष्ठतः । अन्योन्यगुणयुक्तस्य कः केन गुणतोऽधिकः ॥ तेषु तेषु हि कालेषु तत्तदङ्गं विशिष्यते । येन यत् सिध्यते कार्यं तत्प्राधान्याय कल्पते ॥ शान्तिपर्व; मनु. IX. 296-297 contain almost these very words and ideas. मत्स्य 239. 1 has परस्परोपकारीदं सप्ताङ्गं राज्यमुच्यते ।

the seven elements of the state no particular one can be said to excel the others, since each of them has a particular excellence of its own; a particular element is pre-eminent in some particular matter and therefore the superiority of one to the others when expressed (as e. g. in Manu IX. 295) is to be confined to that matter alone.' Manu here emphasizes the harmonious working or unity of the seven elements though they are diverse in their individual characters. The analysis of the elements and nature of the State led ancient Indian writers to hold that a mere conglomeration of people did not by itself constitute a State, but that for a State there must be people who live within certain definite geographical limits (rāṣṭra), they must be bound by the bond to render allegiance to a ruler (svāmī), have a certain system of government (amātya), must have a regulated economic system, a force for defence and international relationships. That is, the most essential elements of a state are (1) a sovereign, (2) a system of government, (3) a definite territory and (4) a population of some size. These four were known even to the most ancient sūtras. Vide Gaut. XI. 1 (rājā), Āp. II. 6. 25. 10 (amātya), Āp. II. 10. 25. 11, II. 10. 26. 4 (viṣaya, nagara, grāma), Gaut XI. 5-8 (prajā).

These seven elements will now be dealt with one after another.

It should be noted that neither Kauṭilya nor Kāmandaka defines *rājya*. Etymologically it means the 'karma' or 'bhāva' (activity or state of a king)', being derived from 'rājan' with the affix 'ya' (ṣyañ or 'yak', acc. to Pāṇini V. 1. 124 and 128). This is the etymological meaning. But 'rājya' is employed in the sense of 'kingdom' in popular parlance and also in the smṛtis and works on polity as in Manu VII. 111, Kām. XIII. 81-82. But when it is said that 'rājya' has seven elements then 'rājya' has a very wide meaning and stands for the king, the ministers, the country and its people and the economic and military resources and in such a case it is proper to translate the word as 'the State' (as including both the Government and the governed). In some cases 'rājya' should be rendered as 'government' which includes only the king and his ministers and conveys also in modern times the agency or machinery through which the will of the State is formulated, realized or carried out; vide Mānasollāsa II. 8, verses 688, 689, 691 The Nītivākyāmṛta (p. 43) says "rājya means the activity of the ruler that would be appropriate to protecting the earth".

Medhātithi on Manu VIII. 1 remarks that *rājya* means 'a prosperous people'. In XIII. 4 Kauṭilya states (*na hyajano janapado rājyam janapadam vā bhavatīti Kauṭilyaḥ*) it as his opinion that a territory without any inhabitants cannot become a *rājya* (a kingdom) or a janapada (as one of the seven elements). Śabara on Jai. II. 3. 3 has a discourse on the derivation of rājya.

Prof. Bhandarkar in 'Some Aspects of Ancient Indian Polity' (pp. 66–89), Jayaswal in 'Hindu Polity' part II p. 9, Prof. B. K. Sarkar in 'Positive Background of Hindu Sociology' Book II pp. 34–39 and others maintain that this ancient analysis of rājya into seven elements shows that the idea of the State as an organism, that is, the organic theory of the State was known to Hindu thinkers and that this doctrine of *saptāṅga rājya*[21a] satisfies the definition of the State given by Bluntschli and others. On the other hand Mr. Anjaria in chapter IV of his 'Nature and grounds of political obligation in the Hindu state' after pointing out how there are different versions of the organic theory of the state denies vehemently that the Hindu theory can be called a proper organic theory of the State, particularly because the Hindu thinkers did not regard the State as a moral organism, because they attached a permanent stigma of inferiority to large sections of the community on the bare ground of birth and that the Hindu conceptions did not harmonize the authority of the State and the liberty of the individual. It would be far beyond the scope of the present work to enter into any discussion of this problem. All that may be said is that Mr. Anjaria tilts the balance to the other side too much. The faults he points out in the Hindu theory and practice beset almost all theories of the State almost in all countries. Even in the times of Plato and Aristotle huge populations of slaves had no voice in the affairs of the state. Up to the 19th century true democracies never existed even in Europe.

The *Ruler*—The necessity of a ruler is forcibly emphasized in several works. The Ait. Br. I. 14 says that the gods thought they were worsted because they had no king, that therefore they elected one by consent. This shows that military necessities

21a. Korkunov in 'General Theory of Law' (tr. by W. G. Hastings, New York, 1922) says 'Bluntschli' assimilates government to the head, as it is the head of the State, the ministry of the interior to the ears, and that of foreign affairs to the nose' (p. 274).

led to kingship. Manu VII. 3 (=Śukranītisāra I. 71) says 'the Creator created the king for the protection of all this world when everything ran through fear hither and thither, as there was then no ruler in the world'. It goes on to say that the Creator proceeded to create Daṇḍa (the power of punishment) for the sake of the king and that if the king does not sedulously employ daṇḍa for punishing those that deserve it, the strong would torment the weak as fish are fried on a pike or as in water fish devour each other (Manu VII. 14 and 20, the last also showing a variant 'jale' for 'śūle'). This idea of *mātsyanyāya* (the maxim of the larger fish devouring the smaller ones or the strong despoiling the weak) is frequently dwelt upon by Kauṭilya, the Mahābhārata and other works. It can be traced back to the Śatapatha-brāhmaṇa XI. 1. 6. 24 'whenever there is drought, then the stronger seizes upon the weaker, for the waters are the law', which appears to mean that when there is no rain, the reign of law comes to an end and *mātsyanyāya* begins to operate. Kauṭilya says 'if daṇḍa be not employed, it gives rise to the condition of *mātsyanyāya*, since in the absence of a chastiser the strong devour the weak' and 'the people overwhelmed by the operation of mātsyanyāya made Manu Vaivasvata their king.' [22] That in the absence of a king (*arājaka*) or when there is no fear of punishment, the condition of *mātsyanyāya* follows is declared by several works such as the Rāmāyaṇa II. chap. 67, Śāntiparva 15. 30 and 67. 16, Kāmandaka II. 40, Matsyapurāṇa 225. 9, Mānasollāsa II. 20 verse 1295. Numerous works contain eulogies of daṇḍa. The king is called daṇḍadhara in many works e. g. in Śāntiparva 67. 16 and Kām. I. 1. Gautama XI. 28 says that the word daṇḍa is derived by the wise from the root 'dam' (to control), that he (the king) should control by means of daṇḍa those who observe no restraint and (XI. 31) that the instructions of the teacher and the power of punishment (wielded by the king) guard those who violate the rules of varṇas and āśramas. The Matsyapurāṇa [23]

22. (दण्डः) अप्रणीतो हि मात्स्यन्यायमुद्भावयति । बलीयानबलं हि ग्रसते दण्डधराभावे । कौटिल्य I. 4; मात्स्यन्यायाभिभूताः प्रजा मनुं वैवस्वतं राजानं चक्रिरे । कौ. I. 13; मत्स्या इव जना नित्यं भक्षयन्ति परस्परम् । अयोध्या 67. 31; दण्डश्चेन्न भवेल्लोके विनश्येयुरिमाः प्रजाः । जले मत्स्यानिवाभक्ष्यन्दुर्बलं बलवत्तराः ॥ शान्ति 15. 30; राजा चेन्न भवेल्लोके पृथिव्यां दण्डधारकः । जले ... बलवत्तराः ॥ शान्ति 67. 16; दण्डाभावे परिध्वंसी मात्स्यो न्यायः प्रवर्तते । कामन्दक II. 40.

23. यस्माददान्तान्दमयत्यशिष्टान्दण्डयत्यपि । दमनाद्दण्डनाच्चैव तस्माद्दण्डं विदुर्बुधाः ॥ शान्ति 15. 8, अग्नि. 226. 16 (reads ०दमयत्यदण्ड्यांश्चदण्डयत्यपि), मत्स्य 225. 17 (reads दुर्मदान् दण्डयत्यपि).

225. 17, Agnipurāṇa 226. 16 and Śāntiparva 15. 8 state that daṇḍa is so called because it suppresses those that are not restrained (from the root 'dam') and punishes those that are imprudent or ungentlemanlike (from the root 'daṇḍ'). Daṇḍa is raised to the position of a divinity by Manu [24] VII. 25 (= Viṣṇudharmasūtra III. 95 = Matsya 225. 8), Yāj. I. 354, Śānti 121. 15. Daṇḍa rules over all people, it protects all of them, daṇḍa is awake even when (the guardians of law) have gone to sleep, the wise regard daṇḍa as dharma (Manu VII. 18 = Śānti 15. 2 = Matsya 225. 14–15). The whole world is under the heel of daṇḍa, for it is difficult to find a man who is pure by nature (Manu VII. 22 = Śānti 15. 34). The conception of daṇḍa is therefore this that the State's will and coercive power keep the individual and nation within the bounds of dharma, punish for breaches and effect the good of the whole. The gods, *dānavas*, gandharvas, the rākṣasas and reptiles—these also tend to bring about enjoyment for men because they are pressed down by daṇḍa (Manu VII. 23). [25] The Bhagavadgītā (X. 38) identifies daṇḍa with the divine Kṛṣṇa 'I am daṇḍa in the hands of those who control others, I am *nīti* (i. e. rājanīti) for the conquerors'. For the detailed effects and long eulogies of daṇḍa, vide Manu VII. 14–31, Matsya 225. 4–17, Kāmandaka II. 38–44. These eulogies of daṇḍa presuppose the theory that people obey law and the dictates of the śāstra through the fear of force or punishment. Daṇḍa should be neither too severe nor too mild, but should be appropriate to the fault committed (Kaut. I. 4, Kāmandaka II. 37, Manu VII. 16, Śānti 15. 1ff, Śānti 56. 21, 103. 34). Śānti 57. 41 advises that one should first secure a king, then wife and then wealth, for in the absence of the ruler there would be no wife nor private property. [26] This shows that the institutions of family and private property and the protection of the weak are bound up with the existence of a ruler. Kātyāyana (in Rāja N. P. p. 30) says the king is the

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24. यत्र श्यामो लोहिताक्षो दण्डश्चरति पापहा। प्रजास्तत्र न मुह्यन्ति नेता चेत्साधु पश्यति ॥ मनु VII. 25 = मत्स्य 225. 8 = विष्णुधर्मसूत्र : ९६ 'III शान्ति (121. 15–16) has नीलोत्पलदलश्यामश्चतुर्दंष्ट्रश्चतुर्भुजः । ... एतद्रूपं बिभर्त्युग्रं दण्डो नित्यं दुरासदः ॥

25. This appears to be suggested by the words of the Tai. Up. II. 8 'भीषास्माद्वातः पवते भीषोदेति सूर्यः । भीषास्मादग्निश्चेन्द्रश्च मृत्युर्धावति पञ्चमः ॥'

26. राजानं प्रथमं विन्देत्ततो भार्यां ततो धनम् । राजन्यसति लोकस्य कुतो भार्या कुतो धनम् ॥ शान्ति 57. 41. The first half is आदिपर्व 160. 12 (Cr. ed. 148.12). This verse is said to have been uttered by Bhārgava.

protector of the helpless, the home of the homeless, the son of the sonless and the father of the fatherless.

In order to magnify the importance of the kingly office, certain works state that the king has in him parts of the gods. For example, Manu says " the Creator created the king with the essential parts taken from Indra, the Wind god, Yama, the Sun, Agni, Varuṇa, the Moon and Kubera the lord of wealth and therefore he surpasses all beings by his majesty (VII. 4–5 and compare Manu V. 96); one should not disrespect a boy-king with the thought ' he is a human being (like others) ' for it is a great deity that stands (before people) in human form as a king " (Manu VII. 8 = Śānti 68. 40). This conception goes back to Gautama XI. 32 (' Therefore a king and a spiritual teacher must not be reviled ') and Āp. Dh. S. I. 11. 31. 5 (' he shall not speak harsh or abusive words of the gods or of the king '). Manu VII. 3–4 are the same as Śukranītisāra I. 71–72. The Matsyapurāṇa 226. 1 states that the king was created by Brahmā by taking portions of gods for wielding the power of punishment for the protection of all beings. Manu (IX. 303–311) puts forward a slightly diluted theory, viz. the king should possess the majesty of and imitate in his actions the first seven deities enumerated above with the Earth as the 8th and Manu sets out what the eight characteristic actions are. Matsya 226. 9–12 are the same as Manu IX. 303–306. The Agnipurāṇa (226. 17–20) states that as the king exercises the functions of nine deities viz. the Sun, the Moon, Vāyu, Yama, Varuṇa, Fire, Kubera, the Earth and Viṣṇu he has the form of these. Vide Śukranītisāra I. 73–79 for similar ideas. These verses do not amount to the express theory of divine origin, but assimilate by analogy the king's functions to those of certain deities. The Nārada-smṛti (prakīrṇaka section, verses 20–31) contains [27] several interesting dicta. It says that in the form of the king it is really Indra himself who moves about on the earth (v. 20), that a king even when devoid of qualities deserves honour from the people, that kings exercise the functions of five deities viz. of Agni, Indra, Soma, Yama

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27. राजेति सञ्चरत्येष भूमौ साक्षात्सहस्रदृक्। प्रजानां विगुणोऽप्येवं पूज्य एव प्रजापतिः॥ पञ्च रूपाणि राजानो धारयन्त्यमितौजसः। अग्नेरिन्द्रस्य सोमस्य यमस्य धनदस्य च॥ अशुचिर्वचनाद्यस्य शुचिर्भवति मानवः। शुचिश्चैवाशुचिः सम्यक् कथं राजा न दैवतम्॥ नारदस्मृति, प्रकीर्णक 20, 22, 26, 52; इन्द्रमेव प्रवृणुते यद्राजानमिति श्रुतिः। यथैवेन्द्रस्तथा राजा संपूज्यो भूतिमिच्छता॥ शान्ति. 67. 4; कात्यायन says ' सुराध्यक्षश्च्युतः स्वर्गान्नृपरूपेण तिष्ठति। कर्तव्यं तेन तन्नित्यं येन तत्त्वं समाप्नुयात् '॥ quoted by राजधर्मकाण्ड III p. 16. तत्त्वं means सुरेशत्वम्.

and Kubera (vv. 26–31). The Mārkaṇḍeyapurāṇa (27. 21–26) mentions the same five deities. 'The Veda says that when a king is chosen it is Indra himself that is chosen; one desirous of prosperity should honour the king just as one worships Indra'—says Śānti 67. 4. Śānti 69 states that all the gods are invisible, but the king is a deity that can be seen. The Vāyupurāṇa (57. 72) remarks [28] that in all past and future *manvantaras* universal emperors (*cakravartin*) are born on the earth with parts of Viṣṇu. The Matsyapurāṇa (226. 1–12) mixes up the theory of the creation of the king from parts of the gods with the lesser idea of his functions being similar to those of certain deities. The Bhāgavata-purāṇa (IV. 14. 26–27) states that Viṣṇu, Brahmā, Śiva, Indra, Vāyu, Varuṇa—these and other gods—exist in the body of the king and that the king is full of (the parts of) all gods. It is to strengthen this conception that ancient kṣatriya dynasties and their panegyrists tried to trace for those dynasties descent from the Sun or the Moon and in later times from Fire. The practice of addressing the king as 'deva' in Sanskrit dramas is due to the same tendency of the glorification of the royal office. Aśoka was styled 'devānām priya' (beloved of the gods) and Kushana emperors like Kaniṣka and Huviṣka styled themselves Devaputra (E. I. vol. I. pp. 371 at pp. 381 and 386). This phenomenon is not confined to India. Alexander the Great and Julius Cæsar had their descent traced to gods and goddesses. Alexander was deified during his life-time in 324 B. C. by the Greek world (vide Cambridge Ancient History, vol. VI. p. 433) and Cæsar's image was carried among those of the immortal gods. Kauṭilya (I. 13) makes a spy say among pauras and jānapadas 'kings are (in) the place of (perform the functions of) Indra and Yama, since they visibly inflict punishment and bestow favours. Even divine punishment affects those who despise them (kings). Therefore kings should not be despised'. Hence it must be said that the conception of the divine nature of the kingly office was well-known in Kauṭilya's days and he was not above recommending the employment of this conception for safeguarding the king's position. Vide Rāmāyaṇa, III. 1. 18–19 and VII. 76. 37–45 and Mārkaṇḍeyapurāṇa 24. 23–28, Viṣṇudharmottara II. 2. 9 for similar ideas. The phrase 'nā viṣṇuḥ pṛthivīpatiḥ'

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28. विष्णोरंशेन जायन्ते पृथिव्यां चक्रवर्तिनः । मन्वन्तरेषु सर्वेषु अतीतानागतेषु वै ॥ वायु 57. 72; compare कादम्बरी para 80 about prince Candrāpīḍa 'सर्वथा नमोऽस्मै रूपान्तरधारिणे भगवते चन्द्रापीडच्छद्मने पुण्डरीकेक्षणाय'.

is well-known and may be interpreted in two ways viz. the ruler of the earth is Viṣṇu incarnated as man or no king is not Viṣṇu i. e. every king is Viṣṇu. The Pañcatantra[29] (I. 120 p. 19) states 'Manu has declared that the king is made up (of parts) of all gods'. The Rājanītiprakāśa is careful to point out that the idea of the king having in him parts of the deities applied only to the mahārāja (the sovereign ruler), while the idea of a ruler doing the functions of five deities applies to vassal kings.[30] For eulogy of the kingly office, vide Manu VII. 6–17, Śānti 63. 24–30, Śānti 68, Kām. I. 9–11, Rājanītiprakāśa pp. 17–31.

But it should not be supposed that this glorification of the king resulted in the full-fledged theory of the divine right of kings or that every king, however bad, was looked upon as a divinity or could do what he liked. In the first place, the Rājanītiratnākara[31] (p. 83) when speaking of the coronation of a prince by his abdicating royal father quotes a verse where the people (*prajā*) themselves are called Viṣṇu. In the second place the king's authority over brāhmaṇas was limited (vide H. Dh. vol. II. part 1 pp. 139–140). The Gautama-dharmasūtra (XI. 1, 7 and 8) says[32] 'the king rules over all, except over brāhmaṇas; all, except brāhmaṇas, should while sitting low on the ground wait upon (worship) him (the king) who occupies a high seat; they (the brāhmaṇas) too should honour him'. From the time of the Ait. Br. (37. 5) the harmony between the king and the brāhmaṇas and the king's following the advice of brāhmaṇas had been insisted upon. Vide Ait. Br. 40. 1, Gaut. VIII. 1, XI. 27. Further the Śukranītisāra (I. 70) states that a king who oppresses the subjects and causes loss of dharma is made up of the parts of *rākṣasas*.[33] Manu (VII. 111–112) states that

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29. सर्वदेवमयो राजा मनुना संप्रकीर्तितः । तस्मात्तमेव सेवेत न व्यलीकेन कर्हिचित् ॥ पञ्चतन्त्र I. Some editions read तस्मात्तं देववत्पश्येत्.

30. इयं च पूर्वोक्तदेवांशरूपता महाराजस्यैव । पञ्च रूपाणि... धनदस्य च-इतीयं नारदोक्तपञ्चरूपता तु कियन्माण्डलिकस्य भूपस्य । राजनीतिप्र. p. 20. Vide Śānti 68. 41–47 for the five.

31. इति सर्वाम् (सर्वं ?) प्रजाविष्णुं साक्षिणं श्रावयेन्मुहुः । राजनीतिर. p. 83.

32. राजा सर्वस्येष्टे ब्राह्मणवर्जम् । तमुपर्यासीनमधस्तादुपासीरन्नन्ये ब्राह्मणेभ्यः । तेऽप्येनं मन्येरन् । गौ. XI. 1, 7–8. गौ. XI. 7 is quoted by मेधा. on मनु VII. 6 and by राजनीतिप्रकाश p. 17.

33. यो हि धर्मपरो राजा देवांशोऽन्यश्च रक्षसाम् । अंशभूतो धर्मलोपी प्रजापीडाकरो भवेत् ॥ शुक्रनीति I. 70; नीचहीनो दीर्घदर्शी वृद्धसेवी सुनीतियुक् । गुणिजुष्टस्तु यो राजा स ज्ञेयो देवतांशकः । विपरीतस्तु रक्षोंशः स वै नरकभाजनः । नृपांशसदृशा नित्यं तत्सहायगणाः किल ॥ शुक्रनीति. I. 86–87.

the king who harasses his subjects loses his life, family and kingdom. Moreover stories of kings killed for their tyranny are found in the ancient Literature. For example, Vena, who was jealous of the gods, wanted sacrificial offerings to be made to himself (and not to the gods) and violated dharma, was killed by the brāhmaṇas (Śāntiparva 59. 93–95, Bhāgavatapurāṇa IV. 14). The Anuśāsanaparva [34] (61. 32–33) solemnly sanctions the killing of a king in certain circumstances "The people should gird themselves up and kill a cruel king who does not protect his subjects, who extracts taxes and simply robs them of their wealth, who gives no lead. Such a king is *Kali* (evil and strife) incarnate. That king who after declaring 'I shall protect you' does not protect his subjects should be killed (by the people) after forming a confederacy, like a dog that is afflicted with madness". Manu (VII. 27–28) states that the great principle of *daṇḍa* if properly wielded conduces to the advancement of the three *puruṣārthas*, but if a voluptuous, mean and unjust king wields it, it recoils on his head and destroys the king together with his relations. Kām. 2. 38 makes it clear that daṇḍa foolishly wielded might exasperate even hermits. The Śāntiparva 92. 19 recommends that a king who has false and very wicked ministers and who puts down dharma should be killed by the people. Even as early as the Tai. S. II. 3. 1 it appears that kings were driven away, while the Śatapatha Brāhmaṇa (XII. 9. 3. 1 and 3) mentions a king Duṣṭaritu Pauṁsāyana who had been expelled from the kingdom which had descended to him through ten ancestors. The Sautrāmaṇi *iṣṭi* is prescribed as a rite for a king to regain a kingdom from which he had been driven away (vide H. Dh. vol. II. p. 1227). Śānti 92. 6 and 9, Manu VII. 27 and 34, Yāj. I. 356 appear to justify at least deposing a king, if not tyrannicide. Similarly, the Śukranītisāra (II. 274–275) states [35] that a king, though of a noble pedigree, should be abandoned, if he violates dharma, if he hates good qualities (in others), lines of policy and the army and if his conduct would lead to the destruction of the kingdom and that the family priest with the consent of the principal

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34. अरक्षितारं हर्तारं विलोप्तारमनायकम् । तं वै राजकलिं हन्युः प्रजाः संनह्य निर्घृणम् ॥ अहं वो रक्षितेत्युक्त्वा यो न रक्षति भूमिपः । स संहत्य निहन्तव्यः श्वेव सोन्माद आतुरः ॥ अनुशासन 61. 32–33; असत्पापिष्ठसचिवो वध्यो लोकस्य धर्महा । शान्ति 92. 19.

35. गुणनीतिबलद्वेषी कुलभूतोऽप्यधार्मिकः । नृपो यदि भवेत्तं तु त्यजेद्राष्ट्रविनाशकम् ॥ तत्पदे तस्य कुलजं गुणयुक्तं पुरोहितः । प्रकृत्यनुमतिं कृत्वा स्थापयेद्राज्यगुप्तये ॥ शुक्र॰ II. 274–275.

officers of state should place on the throne another scion of the royal family who is possessed of the requisite virtues. Nārada props up the theory of divine right by stating that the king secures dominion over (lit. purchases) his subjects by his austerities (performed in former lives) and therefore the king is their lord (prakīrṇaka 25). Śukranīti I. 20 also brings in the doctrine of Karma 'the king holds the earth by the actions of his former lives and by his austerities.' Compare Manu VII. 111–112, Śānti 78. 36. The Śukranītisāra (IV. 7. 332–333) says that brāhmaṇas may even fight and destroy an oppressive kṣatriya king and would thereby incur no sin. The Yaśastilaka (III. p. 431) gives examples of kings killed by their subjects, one being a Kaliṅga king who made a barber his commander-in-chief. In fact in all works on polity we find comparatively little about the king's rights and special privileges, but on the other hand the greatest emphasis is laid on the king's duties and responsibilities. Some works describe the king as a servant of the people whose wages or remuneration for the protection he affords is the taxes he raises. Vide Baud. Dh. S. I. 10. 1, Śukranīti I. 188, Nārada (prakīrṇaka 48), Śānti 71. 10.[36] It may be said here that the apparently inconsistent dicta about the divinity of the king and about his being liable to be deposed or even killed for evil deeds are delivered from two different standpoints and are addressed to different persons. The writers believed in maintaining the *status quo* about the duties of varṇas and āśramas, in the privileges of the respective castes and in the progressive deterioration of dharma in the ages to come and wanted a strong king to preserve the social order; therefore the king was raised to divinity and absolute obedience to his orders was demanded. This was addressed to the people in general. There was danger however of bad kings and ministers oppressing the people by misrule. Hence the king and his ministers were threatened with destruction and death. These dicta were principally meant for the king and his advisers.

In the Kauṭilīya V. 3 we meet with these words "In Rājasūya and other solemn (or elaborate) sacrifices the '*rājā*' gets three times the salary given to others who are as learned as he is" (samānavidyebhyas-triguṇavetano rājā rājasūyādiṣu

36. अन्यप्रकारादुचिताद् भूमेः षड्भागसंज्ञितात् । बलिः स तस्य विहितः प्रजापालनवेतनम् ॥ नारद (प्रकीर्णक verse 48); बलिषष्ठेन शुल्केन दण्डेनाथापराधिनाम् । शास्त्रानीतेन लिप्सेथा वेतनेन धनागमम् ॥ शान्ति 71. 10 ; स्वभागभृत्या दास्यत्वे प्रजानां च नृपः कृतः । ब्रह्मणा स्वामिरूपस्तु पालनार्थं हि सर्वदा ॥ शुक्रनीति I. 188.

kratuṣu). Jayaswal (in 'Hindu Polity', part II. p. 136) seizes upon this passage to show that the king was a salaried person like the prime minister or the commander-in-chief. The words 'in Rājasūya and other *kratus*' should have raised doubts in his mind about his interpretation, but he entirely missed the significance of the passage. Kauṭilya in that passage is *not* referring to the king himself but to his representative or deputy when the king is engaged in numerous ceremonial duties during sacrifices of long duration like the Aśvamedha. The Āp. Śrautasūtra (XX. 3. 1–2), Baudhāyana Śrauta XV. 4, Satyāṣāḍha Śr. XIV. 1. 24–25 state that the *adhvaryu* priest was to deputize for the king when the latter was engaged in the Aśvamedha[37] (which was spread over a period of about two years). The salary referred to by Kauṭilya is to be paid to the adhvaryu when representing the king. Vide H. Dh. vol. II. p. 1232 for this. In X. 3 it is said by Kauṭilya that a virtuous king on the eve of a battle should urge on his soldiers the fact 'I am a wage-earner like yourselves, this kingdom is to be enjoyed by me along with you. You have to strike down the enemy pointed out by me ".[38] Here the theory of the king being a wage-earner or a servant of the State is emphasized in a striking manner.

The word 'rājan' is derived in the Nirukta (II. 3) from the root 'rāj' to shine, but the Mahābhārata (Śānti 59. 125) likes to say that the king is styled 'rājā' since he keeps all people contented, that is, it derives the word 'rājan' from the root 'rañj'. Great poets like Kālidāsa (Raghu IV. 12) follow the Mahābhārata in this, as also in deriving the word 'kṣatriya' from 'kṣata' and the root 'trai', meaning one who protects from wound and injury (Śānti 59. 126 and Raghu-vaṁśa II. 53). Bṛ. quoted in the Rāja. Dh. K. (I. p. 5) appears to derive the word both from 'rāj' and 'rañj' (balena caturaṅgeṇa yato rañjayati prajāḥ I dīpyamānaḥ sa vapuṣā tena rājābhidhīyate).

There are in our authorities germs of several theories about the origin of kingship. Ṛg. X. 173 (which corresponds to

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37. अत्र ये क्षत्रस्याभिषेक्तारस्तेऽध्वर्युमभिषिञ्चन्ति । स आह । ब्राह्मणाश्च राजानश्चाध्वर्युरेतौ द्वौ संवत्सरौ राजा भविष्यति तस्य शुश्रूषध्वं यो ह्यस्य न शुश्रूषिष्यते सर्वस्वं तं जास्यन्तीति । अथाध्वर्युरेतौ द्वौ संवत्सरौ राजा भवति । यजमान इतीतरमाचक्षते । बौ. श्रौ. XV. 4.

38. निर्दिष्टकालो धर्मिष्ठः संहत्य दण्डं ब्रूयात् । तुल्यवेतनोस्मि । भवद्भिः सह भोग्यमिदं राज्यम् । मयाभिहितः परोभिहन्तव्यः । कौटिल्य X. 3. p. 367.

Atharvaveda VI. 87 and 88. 1-2) has been taken as an election hymn by some writers (e. g. Jayaswal in 'Hindu polity' p. 7). But one is constrained to say that it is probably nothing of the kind. The only words that may lend some colour to the theory of election are 'let all the people desire thee (as king)' in Ṛg. X. 173. 1, but those words may apply as a benediction even in the case of one who is already a king. In the Atharvaveda III. 4. 2 there[39] is a reference to the election of a king by the people 'the people (viśaḥ) chose thee to govern the kingdom, these quarters, the five goddesses (chose thee)'. In Atharvaveda III. 5, 6 and 7 also there is a faint allusion to the election of a king by nobles, king-makers, sūtas and headmen of villages, by the clever makers of chariots and the skilled workers in metals. These 'king-makers' are called 'ratnins' in other Vedic texts and the Tai. Br. I. 7.3 states in connection with the twelve offerings in the Rājasūya called 'ratninām haviṁṣi' that the 'ratnins' give the (rāṣṭra) kingdom (to the king). Vide H. Dh. vol. II. p. 1215 n 2648 and p. 1216 for the 'ratnins'. So it appears that the conception was that the king got the kingdom from nobles, high functionaries and the common people. For the coronation bath (and its implications) mentioned in the Ait. Br. vide note 105 below. The Ayodhyākāṇḍa (chap. 1 and 2) describes how Daśaratha when he grew old desired to make his eldest son Rāma the Crown Prince (yuvarāja), how he called together an assembly of vassal kings, citizens and rural inhabitants and placed before the assembly his idea, how they acclaimed loudly the old emperor's proposal and readily gave their consent. This shows that though kingship became hereditary in course of time some element of popular approval was sought for. But such passages referring to the approval of the people cannot be stretched to mean that the king was chosen by a parliament the members of which were elected by the people. All that happened appears to have been only this that citizens that approved assembled spontaneously and expressed their feelings in the assembly. In the Rāmāyaṇa II. 67. 2 it is said that when Daśaratha died sages like Mārkaṇḍeya and Vāmadeva declared along with the *amātyas* in the presence of the family priest (purohita) Vasiṣṭha that as Rāma and Lakṣmaṇa had gone into exile and Bharata and Śatrughna were in the Kekaya country, some scion

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39. त्वां विशो वृणतां राज्याय त्वामिमाः प्रदिशः पञ्च देवीः । अथर्व III. 4. 2; ये राजानो राजकृतः सूता ग्रामण्यश्च ये । उपस्तीन् पर्ण मह्यं त्वं सर्वान्कृण्वभितो जनान् ॥ अथर्व III. 5. 7.

of the Ikṣvāku race should be chosen as king. These sages and ministers are spoken of as king-makers ('rāja-kartāraḥ') here and in chap. 79. 1. In the Ādiparva 44. 6 it is stated that all the citizens of the capital in one voice elected Janamejaya, though a boy, as a king on the death of Parīkṣit and Janamejaya ruled with the help of his ministers and purohita. There are historical examples of the election of kings. The *kṣatrapa* Rudradāman was elected king by the people of Surāṣṭra (who at one time formed a republic, acc. to Kauṭilya XI. 1) and he took an oath as stated in his Junagadh inscription in the year 72 (150 A. D.).[40] Vide E. I. Vol. VIII p. 36 at p. 40. Gopāla, the founder of the Pāla dynasty of Bengal (730–740 A. D.), was elected a king (E. I. Vol. IV. p. 243 at p. 248 and Jayaswal's 'History of India,' 150–350 A. D. pp. 44–45). It appears that it was the business of the chief ministers and brāhmaṇas to propose somebody as king and such persons were called 'rājakartāraḥ'. In Ayodhyā 67. 8 they say 'our country is without a ruler and may therefore encounter disaster'. Arājaka does not necessarily mean in Ayodhyā 67 anarchy but a condition in which there is no king nor ruler. Though this is so, it is not possible to agree with Mr. K. P. Jayaswal ('Hindu Polity', part I, pp. 97–98, 134, 173) that 'arājaka' was 'an idealistic constitution, that it was an extreme democracy almost Tolstoian in ideal, that it was based on a legal and communal basis, that it was a case of extreme individualism in which government itself was regarded as an evil.' Ayodhyā 67. 8–31, Ādi. 41. 27 ff., Śānti 67. 3 ff., Matsyapurāṇa 225. 8–9 are the principal passages on arājaka. A perusal of these will convince any one not carried away by the over-patriotic desire to find the latest European thought in our ancient books that *arājaka* was viewed as a state of chaos and the negation of any constitution; that when a country was without a ruler, no private property in anything existed or was respected and people preyed upon each other like fishes (Ayodhyā 67. 31) and that no Tolstoian ideals were present before the eyes of the writers that drew such a harrowing picture of a State without a ruler. The famous Chinese traveller Hiouen Thsang notices (vide Beal's Buddhist Records of the Western World, 1884, vol. I. pp. 210–216) that when Rājyavardhana was

40. आ गर्भात्प्रभृत्यविहतसमुदितराजलक्ष्मीधारणागुणतः सर्ववर्णैरभिगम्य रक्षणार्थं पतित्वे वृतेन आ प्राणोच्छ्वासात्पुरुषवधनिवृत्तिकृतसत्यप्रतिज्ञेनान्यत्र संग्रामेषु । E. I. vol. VIII. p. 36 at p. 40; मात्स्यन्यायमपोहितुं प्रकृतिभिर्लक्ष्म्याः करं ग्राहितः श्रीगोपाल इति क्षितीशशिरसां चूडामणिस्तत्सुतः ॥ E. I. vol. IV. p. 243 at p. 248 about गोपाल.

treacherously murdered by king Śaśāṅka, the great minister Bhaṇḍin (who was also a cousin of Harṣa) called an assembly of ministers and made to the young Harṣavardhana a proposal to assume the royal authority, which proposal was backed up by all the ministers and magistrates, that thereupon Harṣa agreed to become king after consulting the oracle of Avalokiteśvara Bodhisattva. After the death of Parameśvaravarman II (of the Pallava dynasty), when the Pallava kingdom was subject to anarchy, the subjects chose a king. For the details of this election, vide the important constitutional document of the Vaikuṇṭha Perumal temple (Dr. C. Minakshi's 'Administration and Social life under the Pallavas', 1938, p. 38). The Rājataraṅgiṇī narrates (V. 461–463) that Yaśaskara who was originally a poor man was chosen as king by the brāhmaṇas.

In some other places a theory somewhat like the theory of social contract expounded by Rousseau is adumbrated. The theory of social contract is presented in modern times under two forms. In one there is supposed to be a tacit or explicit agreement between the Government and the people. • In the 2nd form it is supposed that a political society was constituted by a compact among individuals (to which the ruler was not a party). This theory puts forward the notion that government depended on the consent of the people. Kauṭilya (I. 13) refers to the legend that Manu Vaivasvata was made a king by the people, who agreed to assign one-sixth of the grain raised by them as the king's share in return for the protection afforded by him. But Kauṭilya is silent as to whether Manu made any promise to the people. Śāntiparva, chap. 59, states how Vainya, the first king, was called upon by the gods and sages to take an oath and how he promised them that he would protect the world, and would carry out his duties as laid down in the science of government and not act at his sweet will.[41] When this theory of an agreement between the king who took an oath and the people spread among the people, the theory of the divine right of kings, if ever seriously held, would recede more and more into the back-ground. Vide Dr. Beni Prasad's 'Theory of Government in Ancient India' chap. VIII and 'Pre-Buddhist India' (1939) by Mr. R. N. Mehta, chap. II pp. 79 ff. and 101 for election of

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41. प्रतिज्ञां चाधिरोहस्व मनसा कर्मणा गिरा। पालयिष्याम्यहं भौमं ब्रह्म इत्येव चासकृत् ॥ यश्चात्र धर्मो नीत्युक्तो दण्डनीतिव्यपाश्रयः । तमशङ्कः करिष्यामि स्ववशो न कदाचन ॥ शान्ति 9. 106–108.

kings and for Buddhist theories of government. It is not possible to hold as Jayaswal, U. Ghosal and others do (e. g. 'Manu and Yājñavalkya' II, 'Hindu Polity' part II pp. 54–57) that the theory of social contract was the earlier one and that the theory of divine right of kings was later on propounded by the Manusmṛti to support the brāhmaṇa empire of Puṣyamitra. Jayaswal is wrong in saying (in 'Hindu Polity' part II p. 57) 'the theory of the Mānava was never approved or adopted by a single subsequent law-book'. It has been shown above that Nārada and others espoused the same theory. Manu himself eulogises the supreme power of daṇḍa over the king himself (Manu VII. 28). He makes use of both the theories as occasion demands.

The germ of the theory of Divine Right of kings probably goes back even to the Ṛgveda. Ṛg. IV. 42 is a hymn of king Trasadasyu, son of Purukutsa. Some of the ideas therein are startling enough. He says 'the gods rely on the might of Varuṇa, while I am the lord of the people (verse 1, *kratum sacante Varuṇasya devā rājāmi kṛṣṭeḥ &c*); I am Indra and Varuṇa, I am the wide and the deep Heaven and Earth, I am the son of Aditi (verses 3 and 4)'. Here there is an explicit claim by a king to be identical with the mightiest and greatest gods of the Vedic pantheon. In the Atharvaveda VI. 87. 1–2 it is said about the king 'May all the people long for you, may not the kingdom be lost from your hands, may you stand firm in the world like Indra and may you uphold the kingdom'. In the Śatapatha Brāhmaṇa V. 1. 5. 14 (when describing the shooting of arrows in the Vājapeya) it is said 'the *rājanya* is most manifestly of Prajāpati, while being one he rules over many'. Here the position of the rājanya appears to be regarded as due to his being the representative of Prajāpati. In the Śat. Br. V. 4. 3. 4 the sacrificer in the Rājasūya is identified with Indra and it is said that that position is due to two causes viz. (1) his being a member of the kṣatriya order and (2) his participating in a solemn sacrifice. But passages like the last and Śat. Br. V. 1. 3. 4, V. 1. 4. 2, V. 2. 2. 14 *should not* be relied upon in support of the theory of the divine right of kings (as done by U. Ghoshal in 'Hindu Political Theories', pp. 28–29), since every participator (whether a brāhmaṇa or a kṣatriya) in such solemn sacrifices as the Agniṣṭoma and Vājapeya was supposed to possess a celestial body after *dīkṣā* and Pravargya and was often spoken of as identified with Indra and other gods. Viśvarūpa on Yāj. I. 350 quotes a long vedic passage (*āgama*) in which it is stated "the gods said to Prajāpati 'we shall arrange for a king in human

form by taking from the moon, the sun, Indra, Viṣṇu, Vaiśravaṇa (Kubera) and Yama respectively majesty, brilliance, valour, victoriousness, liberality and control" and that the king thus formed asked the gods to give to him Dharma as his friend and that then he would protect the people and then the gods made Dharma (i. e. daṇḍa) his friend.

We may examine the theories of the origin of kingship in the Mahābhārata. The Śāntiparva deals with this subject in two places, in chap. 59 and 67. In chap. 59 Yudhiṣṭhira asks the great warrior and statesman Bhīṣma how the title 'king' arose and how one man, who has fundamentally the same physical and mental equipment as other men, rules over all men. These are not really two questions but only two aspects of the same question. Then Bhīṣma starts by saying that there was originally a state of perfection (*Kṛtayuga*) in which there was no king, no kingdom, no punishment and no chastiser. Gradually *moha* (delusion or aberration of mind) spread among people and then greed, sexual desire and passions arose and the Vedas and dharma perished. The gods did not receive offerings and went to Brahmā, who composed a vast treatise as stated above (p. 4) that dealt with the four goals of existence for the benefit of the world and that was the cream of learning. Then the gods went to Viṣṇu and requested him to appoint (as king) one who deserved to be the best among men. Viṣṇu created a son from his mind called Virajas who did not want to be a king. Fifth in descent from Virajas was Vena who destroyed dharma and so the brāhmaṇas killed him and from his right arm they churned Pṛthu, handsome, well-armed and proficient in the Vedas, Vedāṅgas and Daṇḍanīti. Gods and sages asked him to follow settled dharma, to control his senses and to take an oath (set out above in note 41). He was crowned by the gods and sages for the protection of the people. Viṣṇu himself established him saying 'Oh king, no man will go contrary to your order' and then Viṣṇu entered the king Pṛthu (verse 128) and it is therefore that this world since then bows to kings as to gods. In this account the oath administered to Pṛthu was so administered by the gods and sages and not by the people in the mass, nor does Pṛthu expressly promise anything to the people as such. Probably it was thought that the promise to the sages was impliedly a promise to the people in general. But the account, such as it is, rather appears to emphasize the divine origin of kingship.

Chap. 67 contains a much shorter version of the origin of kingship, probably because a few chapters before another version has already been given or because it embodies the views of some prior work or teacher. It begins by saying that the most desirable thing for a State is to crown a king, that in a kingless country there is no dharma, no security of life nor of property, that therefore the gods appointed kings for protecting people. Then it proceeds to say that the people assembled and made compacts (*samayān*) amongst themselves that whoever would commit libel or assault or adultery and break the compacts made by the people should be abandoned. All people went to Brahmā and requested him to appoint a ruler whom they would all honour and who would protect them. Brahmā appointed Manu for that purpose, but Manu did not at first like the idea, saying 'Government is a very difficult business among men who are always deceitful and I am afraid of the sinful acts of men'. The people asked him not to be afraid as the sins committed by men will affect the perpetrators (and not Manu) and that the people would give him shares of produce (one-tenth of grain, one-fifth of cattle, one-fourth of their dharma &c.). Manu then agreed, went round the world, terrorizing evil-doers and making them conform to dharma. This story about Manu and the people is alluded to by Kauṭilya (vide p. 31 above). Even here Manu promises nothing expressly, while the people agree to pay taxes and answer for their own sins. There is no doubt that some of the details in the two chapters are different. In chap. 67 there is no reference to an original state of perfection nor to a vast work nor to any oath; so also in one it is Vainya who becomes the first king and in the other it is Manu. But the conception in both is mythological and the fundamental fact in both is the same. God gives a king to the people in both, when they were without a king and degeneracy had set in. Though there is no offer to give a share in chap. 59 yet it is to be inferred from the *pratijñā* of Vainya that every subsequent king was deemed to do the same. It may be said that in chap. 67 there is a blending of the theory of Divine Right and of an original compact between king and people. In both, however, the emphasis is on the theory of the divine origin of kingship. Śānti 67. 4 states 'one desirous of prosperity should honour the king as one honours Indra', while chap. 59. 139 asks 'what is the cause but the divine character (the king possesses) on account of which people remain under his control'? It must be said that in both

chapters of the Śāntiparva there is no proper theory of contract between king and people.

The Nāradasmṛti as indicated above (pp. 23, 27 and note 27) is a thorough-going advocate of the theory of divine right. It says (prakīrṇaka 20–22) 'It is Indra himself who moves about on the earth as king; people can nowhere live after transgressing his orders. Since the privilege of protection is his because of his supreme power (majesty) and on account of the fact that he is benign to all creatures, the settled rule is that whatever a king does is right. Just as the husband, though weak, must be honoured by the wife, so a ruler though devoid of qualities must be honoured by his subjects'. Verse 25 inculcates the duty of obedience to the king.

According to Mr. J. N. Figgis in his book 'The divine right of kings' (1934) pp. 5–6, the theory of the Divine Right of kings in its completest form involved the following propositions: (I) monarchy is a divinely ordained institution; (II) hereditary right is indefeasible i. e. the right acquired by birth and descending by the law of primogeniture cannot be forfeited through any acts of usurpation, or by any incapacity of the heirs or by any act of deposition; (III) kings are accountable to God alone, i. e. a limited monarchy is a contradiction in terms; (IV) non-resistance and passive obedience are enjoined by God i. e. in any circumstances resistance to the king is a sin and leads to damnation and that when the king issues a command directly contrary to God's law, the latter is to be obeyed and also all penalties attached to the breach of the king's law are to be patiently borne. This theory was very much to the fore in the 16th and 17th centuries when in Europe theology and politics were in close union.

It is to be seen how far the ancient Hindu theory agreed with this full-fledged theory of the divine right of kings. As regards proposition I it has been shown above that the Manusmṛti, the Mahābhārata and other works held that the king was either God himself, or god's vicar or vicegerent performing functions similar to those of several gods. As regards proposition II all Sanskrit works recognised hereditary right and primogeniture, but they allowed exceptions as will be shown later on. Our ancient books did not accept the third and the fourth propositions *in toto*. They say that the king cannot do as he likes, that he has to carry out the dictates of dharma, his

power to make new rules is limited and if he does not act up to the rules of dharma he may be deposed, disobeyed or killed. Vide quotations from Śukranīti and Anuśāsanaparva cited above. When Manu (VII. 111–112) says that a king who harasses his kingdom loses his life, his family and his kingdom, it is implied that people are not bound to suffer silently all the wrongs heaped upon them by a bad king but that they may turn round and either depose him or kill him. Fick (pp. 103–104) gives examples from the Buddhist Jātakas where bad kings were killed by the people and others were elected in their place. There is no doubt that obedience to the king is enjoined by Nārada and others, but it is due to the king only so long as he does not swerve from the path of right and virtue. Nārada[42] (prakīrṇaka verses 12 and 32) says 'on account of his majesty and sanctity a king and brāhmaṇa are not to be abused if they do not swerve from the right path; one should not treat with contempt or scold the king, one should abide by his order, since (the penalty of) death may follow from violating it (king's order)'. Here the duty of obedience is not based on the divine origin of kingship, but on the practical wordly ground that an offended king may punish with death. 'Nārada's doctrine does not lead to the requirement of absolute submission and non-resistance to a wicked king.

It is impossible to hold that the theory of divine right was put forward as a counterblast to the theory of social contract. The theory of divine right would arise very naturally even in the oldest days, while the theory of social contract is the product of a more advanced stage of political thought. The theory of divine right is not more absurd than the theory of social contract and was popularly held not only in India, but in many Christian countries, relying on passages in the Bible such as Daniel 4 and Romans 13. 1–7. The theory of divine right was circumscribed in India by another theory from very ancient times. The cry of the American colonists against England in the 18th century was that taxation and representation went hand in hand; that of the ancient Hindu political and dharmaśāstra writers was that taxation and protection went hand in hand (see n. 45). Baud. Dh. S. I. 10. 1. says 'the king being hired for the sixth

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42. अनिर्देश्यावनिन्द्यौ च राजा ब्राह्मण एव च । कीर्तिमत्त्वाच्छुचित्वाच्च यदि न स्यात्पथश्च्युतः ॥ तपःक्रीता प्रजा राज्ञा प्रभुरासां ततो नृपः । ततस्तद्वचसि स्थेयं वार्ता चासां तदाश्रया ॥ तस्मात् तं नावजानीयान्नाक्रोशेच्च विशेषतः । आज्ञायां चास्य तिष्ठेत मृत्युः स्यात्तद्व्यतिक्रमात् ॥ नारद (प्रकीर्णक 12, 25, 32). Vide Manu VII. 12–13, Gautama XI. 32. (rājācāryāvanindyau).

part (that he takes as tax) should protect the subjects'. Yāj. I. 337 states 'The king shares half of that evil which the subjects do when not protected by the king, since he takes taxes (from the people)' and Yāj. I. 334 lays down that a king who protects according to śāstras receives the 6th part of the merit (*puṇya*) of the subjects. Śāntiparva (57. 44–45) states 'One should abandon six persons like a leaking boat in the ocean viz. a teacher who does not explain, a priest who does not study the Veda, a king who does not protect &c.' Śukranīti I. 121 affirms 'the gods destroy a king who does not protect, a brāhmaṇa who does not perform austerities, a wealthy man who makes no gifts.' Vide Vasiṣṭha I. 44–46, Gaut. XI. 11, Viṣṇu Dh. S. III. 28, Udyogaparva 132. 12, Śānti 67. 27 (4th part of puṇya), Śānti 24. 12 (4th part), Śānti 72. 20, Āśramavāsi 3.40, Anuśāsana 61.34 and 36, Kām. II. 10 for the idea that the king receives a part (generally 6th part) of the *puṇya* (and also sin) of the people. The king had to protect even forest hermits who paid no taxes, as he would share in their *puṇya*[43]. Vide Rāmāyaṇa III. 6. 14. Kālidāsa echoes this in the Śākuntala II. 13. Ādiparva 213. 9 looks upon the king who takes the sixth part as tax and affords no protection as the arch-sinner in the world. Śānti 71. 29 says that the spiritual merit that a king gathers by protection according to the sacred code yields rewards for him in heaven for ten thousand years.

From the preceding pages it is clear that the following are put forward as the grounds on which the obligation to render obedience to the ruler is based: (1) the king has divinity in him, (2) the great utility of the ruler affording protection as regards life, liberty and property, (3) the fear of punishment (Manu VII. 22), (4) a primeval contract between the ruler and the people, (5) the interdependence of the ruler and the people as parts of one organism (viz. the State). Vide Medhātithi on Manu IX. 294 for this last.

Who should be king? There were several views on this point. One meaning of the word 'rājan' is 'kṣatriya'. Manu (VII. 1) states that he will declare *rājadharmas* and in the very next verse he employs the word 'kṣatriya' and remarks that a kṣatriya who has undergone the upanayana *saṁskāra* (or *abhiṣeka* according to some commentators) should afford protection to all in his kingdom. Therefore a kṣatriya is the most proper person

43. यत्करोति परं धर्मं मुनिर्मूलफलाशनः । तत्र राज्ञश्चतुर्भागः प्रजा धर्मेण रक्षतः ॥ अरण्यकाण्ड 6. 14.

to be a king. Some of the works such as the Rājadharma-kaustubha, Rājanītiprakāśa, the Nītimayūkha, and Par. M. vol. I. pp. 449–451 refer to the discussion in the Pūrvamīmāṁsā works on the topic of the *Aveṣṭi* sacrifice. On Jaimini II. 3. 3 Śabara and Kumārila hold an elaborate discussion. The Vedic texts say 'rājā rājasūyena yajeta' ('the Rājasūya should be performed by a rājan'). Among the numerous constituents of that sacrifice there is an *iṣṭi* called Aveṣṭi, with reference to which a vedic passage says 'if a brāhmaṇa performs aveṣṭi, he places the *āhuti* (offering) for Bṛhaspati in the middle, if a kṣatriya performs it the offering to Indra is placed in the middle of the offerings &c.'. The *pūrvapakṣa* (prima facie view) is that the word 'rājan' applies to any one (whether a brāhmaṇa, a kṣatriya or a vaiśya) who protects the people. The *siddhānta* (the established conclusion) is that in this text the word *rājan* means a kṣatriya and that by the other passage about brāhmaṇas &c. what is meant is that brāhmaṇas and vaiśyas may independently perform the Aveṣṭi sacrifice, but that only a kṣatriya can perform the Aveṣṭi as part of the Rājasūya rites. Śabara makes the interesting remark that in the Āndhra country the word 'rājan' is applied to a man of the kṣatriya caste even though he does not pursue the occupation of protecting a country or a city; while Kumārila observes that persons of all the four varṇas are seen as rulers of kingdoms.[44] In the literature on dharmaśāstra the word 'rājan' is understood in the sense of 'one who rules over or protects a country' (i. e. the pūrvapakṣa view in the Pūrvamīmāṁsā). Vide Medhātithi on Manu VII. 1. Aparārka[45] (on Yāj. I. 366) remarks "when he who is not a kṣatriya performs the work of a kṣatriya (i. e. becomes a king) he should do all this (that a kṣatriya king has to do) since the maxim is 'that by assuming the position or the work of a particular person or thing one receives what is due to that other' and the

44. अवेष्टौ यज्ञसंयोगात्क्रतुप्रधानमुच्यते । जै. II. 3. 3 ; ननु जनपदपुरपरिरक्षणवृत्तिमनुपजीवत्यपि क्षत्रिये राजशब्दमान्ध्राः प्रयुञ्जते प्रयोक्तारः । शबर (p. 580); तत्र राज्यमविशेषेण चत्वारोपि वर्णाः कुर्वाणा दृश्यन्ते। तस्मात्सर्वे राजानः । तन्त्रवार्तिक p. 580.

45. एतत्सर्वं क्षत्रियस्य राज्यं कुर्वतः प्रविहितम् । यदा पुनरक्षत्रियः क्षत्रियकार्यं कुर्यात्तदानेनाप्येतत्सर्वमनुष्ठेयम् । तत्कार्यापत्त्या तद्धर्मलाभः—इति न्यायात् । करादानप्रयुक्तत्वाच्च प्रजापालनस्य । सर्वो हि धनं प्रयच्छन्नात्मसमवायि प्रयोजनमुद्दिशति । न च करदानस्य स्वगुप्तेरन्यत्प्रयोजनमस्ति । तस्मात्करमाददानेन प्रजापालनं विधेयमिति सिद्धम् । अपरार्क on या. I. 366. This maxim is taken from the महाभाष्य on the first वार्तिक on पाणिनि I. 1. 56 'लोके यो यस्य प्रसङ्गे भवति लभतेऽसौ तत्कार्याणि । तद्यथा । उपाध्यायस्य शिष्यो याज्यकुलानि गत्वाग्रासनादीनि लभते' Kielhorn's ed. vol. I, p. 133. Its *form* in grammatical works is तत्स्थानापत्ते तद्धर्मलाभः ।

duty of protecting the subjects arises from the fact of taking taxes from them. For everyone when giving wealth does so with reference to a purpose related to himself and there is no purpose except one's protection that is intended in rendering taxes. Hence it is established that whoever receives taxes must secure protection of the subjects". According to Kullūka the word 'rājan' means 'any person who is crowned king and protects the country and capital' and is not used in the sense of 'a person of the kṣatriya caste'. The Rājanītiratnākara (p. 2) after citing Kullūka and Kāmadhenu states that many hold that 'rājan' means 'any one who takes upon himself the task of protecting the subjects'. The Rājanītiprakāśa holds[46] a long discussion (pp. 10–15), states that the word 'rājan' may have three meanings viz. any one who protects people, a kṣatriya in general or a kṣatriya who is crowned and ultimately gives it as its opinion that the word 'rājan' is applied in popular usage to any one, whether crowned as king or not, who is the ruler of a country. The Vaijayantī on Viṣṇu Dh. S. III. 44 explains 'rājñām' as 'of kṣatriyas' by following the Aveṣṭi maxim.

Several brāhmaṇa families founded kingdoms and empires. Puṣyamitra, founder of the Śuṅga empire, was a brāhmaṇa (Harivaṁśa III. 2. 35 ff, E. I. vol. 20 p. 54); the Kāṇvāyanas, who followed the Śuṅgas, were brāhmaṇas and so were the Vākāṭakas, the Kadambas (vide Taḷaguṇḍa pillar Inscription of Kakusthavarman in E. I. vol. VIII. p. 24) and several others. Vide H. Dh. vol. II. pp. 122–123 for texts on the question as to when a brāhmaṇa should follow the profession of arms. Manu XII. 100 states that a brāhmaṇa who knows the Veda deserves to be made a king, a commander-in-chief, the wielder of the power of punishment. Kumārila's dictum that persons of all varṇas are seen to be rulers has been already quoted. Gopāla the founder of the Pāla dynastry of Bengal was a śūdra. Manu IV. 61 directs a brāhmaṇa not to stay in a country where the ruler was a śūdra. Medhātithi[47] explains this by saying

46. नृपग्रहणेन जनपदैश्वर्यवतोऽधिकारमाह । प्रमाणान्तरमूला ह्यत्र धर्मा उच्यन्ते न सर्वे वेदमूलाः । मेधा॰ on मनु VII. 1; तथा विज्ञानेश्वरोऽपि अभिषेकादिगुणयुक्तस्य राज्ञः प्रजापालनं परो धर्मः । तथापि नृपग्रहणसमभिव्याहारादनभिषिक्तेऽपि जनपदैश्वर्यवति लोकप्रसिद्ध्या राजशब्दो वर्तते । राजनीतिप्र. p. 14; अवेष्टिन्यायेन राज्ञां क्षत्रियाणां न पार्थिवानामेव-वैजयन्ती.

47. यो जनपदः शूद्रवशवर्ती तत्र न वसेत् । मन्त्रिसेनापतिदण्डकारिकाद्याः सप्त प्रकृतयो राज्यं यत्र सर्वाः शूद्रजातीयाः तत्र निवासनिषेधोऽयम् । मेधा. on मनु IV. 61. It is not clear who दण्डकारिक (inflicter of punishment?) is. Should we read दण्डपाशिक (as in the Valabhi plates in E. I. XI. pp. 83 and 94 or XV. p. 257) or दण्डनायक (as in E. I. IX. p. 289 or E. I. XX. p. 7)?

that the prohibition applies only to a country where all the seven high functionaries such as the chief minister, the commander-in-chief are of the śūdra caste; compare Āp. Dh. S. I. 11. 32. 18. Manu's dictum related to a time when there was hardly any śūdra king. But the logic of facts was too much for Medhātithi who had to twist the plain words of Manu. Medhātithi on Manu VIII. 1 remarks that 'persons of other varṇas who subsist by the mode prescribed for kṣatriyas have power over the kingdom and have to protect the people'. Śāntiparva remarks that whoever protects people from the hordes of dasyus and wields the power of punishment according to smṛti rules must be considered as king. The Harivaṁśa (III. 3. 6 'akṣatriyāśca rājāno viprāḥ śūdropajīvinaḥ') and some of the Purāṇas in depicting the awful degeneracy of the Kali age in a prophetic strain state that the kings in the Kali age will be mostly śūdras and that śūdra kings will celebrate Aśvamedha sacrifices. Vide, for example, Matsya 144.40 and 43 and Liṅga-purāṇa 40. 7 and 42. Hiouen Thsang notices that in the first half of the 7th century A. D. Sind was under a śūdra king (Beal's B. R. W. W. vol. II. p. 272).

It was almost a universal rule that a male alone was to be the ruler. There appear to have been stray exceptions. The Śāntiparva (33.43–46) enjoins[48] upon a conqueror the duty to place on the throne of a conquered country the brother, son or grandson of the vanquished king and if no prince be available, then to crown even the daughter of the late king. The Rājataraṅgiṇī (V. 249 and VI. 332) describes at great length the *regime* of the notorious queens Sugandhā (904–906 A. D.) and Diddā (980–81 A. D.) of Kashmir. In India for many centuries there has been no Salic Law expressly declaring that daughters cannot inherit land, though on account of the general position of women, the requirements of disturbed times and military necessity women did not generally assume the role of sovereigns. In a copper-plate grant from Ganjam (of about the 13th century) it is stated that when a certain king named Śubhākara died his queen ascended the throne and after her her daughter Daṇḍi-mahādevī, who is styled 'parama-bhaṭṭārikā-mahārājādhirāja-parameśvarī' ruled the earth for a long time (E. I. vol. VI p. 133 at p. 138). Whether the grandiloquent titles were deserved by the queen or were only the exaggerated effusions of a courtier,

48. तेषां पुराणि राष्ट्राणि गत्वा राजन् सुहृद्वृतः । भ्रातॄन् पुत्रांश्च पौत्रांश्च स्वे स्वे राज्येऽभिषेचय ॥ ... कुमारो नास्ति येषां च कन्यास्तत्राभिषेचय । शान्ति 33. 43 and 45.

it is clear that the widow and daughter of the last male ruler succeeded to the thronè. The Raghuvaṁśa (XIX. 55, 57) states that the widowed queen of king Agnivarṇa sat on the throne and carried on the government with the help of hereditary ministers.

Apart from conquest and election in rare cases, monarchy was hereditary and generally descended by primogeniture. The passage from the Śatapatha Brāhmaṇa (XII. 9.3, 1 and 3) mentioning the descent of kingship for ten generations in succession has already been referred to (p. 26). Though succession was hereditary it was the general rule that the eldest son ascended the throne when the reigning monarch died or abdicated. The rights of the eldest son or daughter as against the younger son or daughter were very jealously guarded in the vedic age. It has already been shown how marrying before one's elder brother or sister was condemned in the vedic age and also in the times of the smṛtis (H. Dh. II. pp. 546–549). Even the Ṛgveda several times refers to *jyaiṣṭhya* (rights of seniority) of Indra (Ṛg. I. 5. 6, XI. 50.3). The Tai. S. II. 2.11.5 states that the gods agreed to treat Indra as the 'jyeṣṭha' (the eldest) and Tai. S. II.[49] 5. 2. 7 refers to the ancient practice of giving all wealth (of the father) to the eldest son. The Ait. Br. 19.4 narrates the story that the gods did not accept Indra's position as the eldest and most exalted among them and that Indra then induced Bṛhaspati to perform the Dvādaśāha sacrifice for him, whereby he secured that position. The Nirukta II. 10 sets out the interesting story that Devāpi and Śantanu were two brothers, scions of the Kuru family, of whom Devāpi was the eldest, but Śantanu the younger one got himself crowned king and so Devāpi practised austerities. The result was that there was a drought in Śantanu's kingdom for 12 years. The brāhmaṇas said to him 'You are guilty of having violated dharma in that passing over the eldest brother you got yourself crowned. Therefore God does not send down rain'. Then Śantanu desired to give the kingdom to Devāpi, who however said that he would be his purohita and make him perform a sacrifice. The Ṛgveda hymn X. 98 was then composed by Devāpi for bringing down rain. This story shows how long before Yāska the popular belief was that it was a great sin to

49. तस्माज्ज्येष्ठं पुत्रं धनेन निरवसाययन्ति । तै. सं. II. 5. 2.7. Āp. Dh. S. (II. 6. 14.12–13) cites this text and says that it is a mere *anuvāda* and not a *vidhi* and gives it as its own view that sons equally share the paternal wealth.

pass over an elder brother in marriage and other matters and doing so brought down the serious displeasure of the gods. Vide Bṛhad-devatā VII. 156-157 and VIII. 1-9 for the same story in a little greater detail, viz. that Devāpi suffered from a skin disease, that when Devāpi said to the subjects that he did not deserve the kingdom and that Śantanu should be their king, the subjects crowned Śantanu as king. When Yayāti desired to pass over his elder sons Yadu and others because they disobeyed him and wanted to make the younger Pūru his successor the brāhmaṇas and citizens protested 'How can the younger son secure the kingdom passing over the elder one[50]'? Arjuna upbraids Bhīmasena who got enraged against Yudhiṣṭhira 'who would act against one's eldest brother that follows the path of dharma?' (Sabhā 68.8). In the Rāmāyaṇa[51] Daśaratha addresses Rāma (II. 3.40) 'you are born of my eldest queen, who is of the same class as myself (i. e. of kṣatriya blood)' and Vasiṣṭha says to Rāma 'Among all Ikṣvākus the eldest son becomes the king'; a younger brother is not crowned king when the elder exists' (II. 110.36). The Ayodhyākāṇḍa in several places (8.23-24, 101.2) reiterates the idea that all the sons of a king do not succeed but only the eldest, although the other sons may be equally fit and endowed with qualities. Kauṭilya (I. 17)[52] states that people esteem rulership going to the eldest except in the case of some calamity. Manu IX. 106 says that by the very birth of the eldest son, a man becomes free from the debt he owes to his *pitṛs* and therefore the eldest deserves to get everything from the father. The Rājadharma-k. (pp. 234-235) after quoting the Kālikāpurāṇa and the Rāmāyaṇa lays down the following propositions: (1) the aurasa son of a king alone succeeds in preference to the eleven kinds of secondary sons (whether he is junior or senior in age); (2) if the son of a junior queen (of the same caste) is senior by birth, he succeeds in preference to the son of the senior queen,

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50. कथं ज्येष्ठानतिक्रम्य कनीयान् राज्यमर्हति ॥ ... मातापित्रोर्वचनकृद्धितः पथ्यश्च यः सुतः । स पुत्रः पुत्रवद्यश्च वर्तते पितृमातृषु ॥ आदिपर्व 85. 22 and 25 = वायु 93. 79 and 81.

51. ज्येष्ठायामपि मे पत्न्यां सदृश्यां सदृशः सुतः । उत्पन्नस्त्वं गुणज्येष्ठो मम रामात्मजः प्रियः ।... तस्मात्त्वं पुष्ययोगेन यौवराज्यमवाप्नुहि । अयोध्याकाण्ड II. 3. 39-41. These are quoted in राजधर्मकौ. p. 234 and राजधर्मकाण्ड II. p. 13 (with variations). इक्ष्वाकूणां हि सर्वेषां राजा भवति पूर्वजः । पूर्वजे नावरः पुत्रो ज्येष्ठो राजाभिषिच्यते ॥ अयोध्या 110. 36.

52. अन्यत्रापद ऐश्वर्यं ज्येष्ठभागि (!) तु पूज्यते । कौटिलीय I. 17 last verse but-one.

who (son) is younger in age; (3) if two sons are born to two queens at the same moment, the son of the senior queen is preferred; (4) if twins are born to the senior queen, the son who is born first is to be preferred.

If the eldest son suffers from a physical or mental defect (such as blindness or lunacy) he is to be passed over and his younger brother becomes king (vide Manu IX. 201 for grounds of exclusion from inheritance). Ādiparva[53] 109. 25 states that Dhṛtarāṣṭra because he was blind did not succeed to the kingdom. Vide also Udyoga 147. 39. The Śukranītisāra (I. 343-344) states that if the eldest prince suffers from deafness, dumbness, blindness, leprosy or impotence he is unfit to rule and that in such a case his younger brother or son should succeed.[54] The Śukranītisāra further points out that by dividing a kingdom among the several princes no benefit results, but on the contrary the small parts would fall an easy prey to enemies; therefore when the eldest alone succeeds he should make his younger brothers provincial governors or superintendents over the treasury, horses &c. (I. 346-348). The Rājadharmakaustubha lays down a few additional propositions: (1) even if the eldest does not succeed owing to some mental or physical defect, his son's right will remain intact and R. D. K. quotes the words of the fisherman chief to Bhīṣma in Ādi. 100. 92.[55] The Bālambhaṭṭī on Yāj. I. 309 and Rājanītiprakāśa p. 40 say the same. Another example is that of Aṅśumān who became king when his father Asamañja was exiled from the state by Sagara for his misdeeds. (2) When a younger son is crowned king because the eldest is disqualified, then after the former's death his son succeeds and not the son of the disqualified eldest son who is born after the coronation of the younger (e. g. Yudhiṣṭhira deserved the kingdom on Pāṇḍu's death and not Duryodhana). The Nītivākyāmṛta (sec. 24 p. 249) lays down the order of succession in the case of kings as follows: the son, full brother, half-brother, uncle, a male of the same family, daughter's son, a stranger (who is either elected or who takes up the kingdom[56]).

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53. धृतराष्ट्रस्त्वचक्षुष्ट्वाद्राज्यं न प्रत्यपद्यत । आदिपर्व 109. 25 quoted by राजधर्मकौ. p. 235.

54. ज्येष्ठोपि बधिरः कुष्ठी मूकोन्धः षण्ढ एव च । स राज्यार्हो भवेन्नैव भ्राता तत्पुत्र एव हि ॥ शुक्रनी. I. 343-344.

55. तवापत्यं भवेद्यत्तु तत्र नः संशयो महान् । आदि 100. 92.

56. सुतसोदर्यसपत्नपितृव्यकुल्यदौहित्रागन्तुकेषु पूर्वपूर्वाभावे भवत्युत्तरस्य राज्यपदावाप्तिः । नीतिवाक्यामृत (राजरक्षासमुद्देश) p. 249.

Sometimes a king selected a younger son to succeed him. There are famous historical examples. The great Gupta Emperor Samudragupta though a younger son was nominated by his father Chandragupta I to succeed and by his brilliant and most successful career Samudragupta more than justified the choice. Vide the Allahabad Pillar Inscription verse 4 (Gupta Inscriptions p. 6). Similarly Chandragupta II, though younger, was nominated by his father Samudragupta to succeed himself. Yayāti selected his youngest son Pūru because he was devoted and obedient and the eldest and other sons disobeyed him. Vide Ādiparva chap. 75 ff. and above p. 42. The principle of hereditary succession was so strong that even a boy king was placed on the throne. Vide Raghu. XVIII. 39.

In almost all works on rājaśāstra there is a disquisition on the qualities that a good king should possess. Vide Kauṭ. VI. 1, Manu VII. 32–44, Yāj. I. 309–311 and 334, Śaṅkha-Likhita quoted in R. D. K. III. p. 14 and Rājanīti-prakāśa p. 116, Śānti 57. 12 ff. and 70, Kām. I. 21–22, IV. 6–24, XV. 31, Mānasollāsa II. 1. 1–9 (p. 29), Śukra I. 73–86, Viṣṇudharmottara II. 3. Only one or two passages can be set out here. Yāj. (I. 309–311 and 334) states 'a king should have great energy, should be generous, mindful of past (good or bad) turns done by others, dependent on those who are advanced (in austerities, knowledge and experience), possessed of a disciplined mind, endowed with an even temper (in good or bad luck), born of a noble family (on both sides), truthful, pure (in body and mind), prompt in action, of strong memory, not mean-minded, not harsh (in words or acts), observant of the rules of *dharma* (as to varṇas and āśramas), free from vices, talented, brave, clever in concealing secrets (or acc. to Bhāruchi and Aparārka 'clever in scenting the secrets of his enemies'), guarding the weak points of his state, well-taught as regards logic, the science of government, the science of wealth and the three vedas. He should be forbearing towards brāhmaṇas, straightforward towards his friends, wrathful towards his enemies, and should be (kind) like a father towards his servants and subjects'. Manu VII. 32 is very similar to Yāj. I. 334. The Mit. says that the qualities specified in Yāj. I. 309–311 are *antaraṅga* (inward or more essential). The 2nd quality 'sthūla-lakṣa' occurs also in the inscription of Rudradāman (E. I. vol. VIII. at p. 44). From I. 312 Yāj. states the *bahiraṅga* qualities viz. selection of ministers, purohita and sacrificial priests, gifts to worthy brāhmaṇas, protection &c.

Kauṭilya VI. 1 contains several lists of the king's qualities from several points of view. First, there is a list of qualities that make the king win the heart of the people (or make him approachable) viz. being of a noble family, godly, spirited, consulting the aged, virtuous, truthful, not failing in his promises, grateful, taking broad views (not pusillanimous), highly enthusiastic, not given to procrastination, powerful enough to control his feudatories, firm in mind, having a council of ministers of no mean calibre, desirous of self-discipline. These are called 'ābhigāmika-guṇas' which word occurs in the Palitana plates of Dharasena II (of Valabhi) in E.I. vol. XI p. 83 and in the Māliya plate of the same king (Gupta Ins. pp. 164, 169). The Daśakumāracarita VIII appears to make a pointed reference to this list when it makes a character say that the king (there referred to) has in him all the qualities beginning from good family (sarvaivātma-sampad-abhijanāt-prabhṛti &c.) Then the intellectual qualities he should possess are: desire to learn, study, understanding of what is studied and retaining it, reflection, discussion and devotion to the principles accepted after discussion. Almost the same qualities of the intellect (*dhī*) are mentioned by Kām. IV. 22. The word 'śakyasāmanta' (in Kauṭ. VI. 1) occurs also in Agnipurāṇa 239. 4. The qualities that are the different aspects of his enthusiasm (or energy) are: valour, non-endurance (of the might of others), quickness (of action) and assiduity. The same occur in Kām. IV. 23. Then follows a long list of qualities that go to make up the personal endowment of the king (*ātma-sampat*). Gaut. (XI. 2, 4-6) requires that the king should do what is right (acc. to śāstras) and speak (or decide) rightly, should be pure (at heart and externally), should control his senses, be possessed of qualified servants and endowed with knowledge of the means of policy, should be even-handed towards all his subjects and look after their welfare. The long list of Śaṅkha-likhita agrees more or less with those of Kauṭilya and Yāj. Śāntiparva 70 states that the king should possess 36 qualities, viz. he should not speak bitterly, he should be godly, not wicked, not haughty, of agreeable address &c. Kām. I. 21-22 mentions 19 qualities that lead to the well-equipped personality of the king (*ātma-sampat*), viz. study of śāstra (Daṇḍanīti), intellect, serenity, cleverness, boldness, power of comprehension, energy, eloquence, firmness, capacity to endure the worries of adversities, majesty, purity, kindness, liberality, truthfulness, gratefulness, noble family, character, self-restraint. Then Kām. in IV. 15-19 sets out the qualities called *ātma-sampat*, which

generally agree with Kauṭilya's enumeration (in VI. 1). Acc. to Kām. IV. 24 liberality, truthfulness and valour are the three greatest qualities in a king, who, when endowed with these, acquires all other qualities. The Mānasollāsa (II. 1. 2–7) first enumerates 44 qualities such as truthfulness, spiritedness (which agree more or less with Kauṭilya's enumeration) and then states that the five most essential qualities in a king are truthfulness, valour, forbearance, liberality and capacity to appreciate the worth of others. The Agnipurāṇa (239. 2–5) enumerates 21 qualities such as noble family, character &c. In the Paraśurāma-pratāpa 96 qualities are enumerated in the Rājavallabhakāṇḍa (Ms. 239 of Viśrāmabāg collection II, folio 21b). The Sabhāparva 5. 107–109 and Rāmāyaṇa II. 100. 65–67 require the king to avoid 14 faults viz. atheism, falsehood, hot temper, carelessness, procrastination, not seeing the wise, laziness, addiction to five pleasures of sense, considering state matters alone (without *mantrins*), taking counsel with those who do not know politics, not starting to do what is decided upon, not guarding secret royal policy, not practising auspicious acts, taking up undertakings on all sides at one and the same time. Vanaparva 251. 5 says that subjects do not like a king who is very timid, very weak, procrastinating, careless and immersed in pleasures on account of vices. Sabhā 5. 125 states that sleep (by day), laziness, timidity, hot temper, softness and dilatoriness are six calamities in a king.

The works on dharmaśāstra and arthaśāstra devote a good deal of space to the education of the king and to his moral discipline. Gaut. XI. 3 requires that the king should have received instruction in Trayī (the three Vedas) and Ānvīkṣikī. This last has been differently interpreted by different writers. Kauṭ. I. 2 says that Ānvīkṣikī comprehends Sāṅkhya,[57] Yoga and Lokā-

57. सांख्यं योगो लोकायतं चेत्यान्वीक्षिकी। ... बलाबले चैतासां हेतुभिरन्वीक्षमाणा लोकस्योपकरोति व्यसनेऽभ्युदये च बुद्धिमवस्थापयति प्रज्ञावाक्यक्रियावैशारद्यं च करोति। प्रदीपः सर्वविद्यानामुपायः सर्वकर्मणाम्। आश्रयः सर्वधर्माणां शश्वदान्वीक्षिकी मता॥ अर्थशास्त्र I. 2. This last verse occurs in वात्स्यायनभाष्य on न्यायसूत्र I. 1. 1, where the 4th pāda is विद्योद्देशे प्रकीर्तिता. Some read आन्वीक्षकी (Jolly's ed. of अर्थशास्त्र) but आन्वीक्षिकी seems to be more grammatical and to be the reading of most classical works. The Trivandrum ed. reads आन्वीक्षिकी. Patañjali in his Mahābhāṣya has a sentence वर्णिका भागुरी लोकायतस्य (Bhāguri expounds the Lokāyata system), vol. III p. 325 on Pāṇini VII. 3. 45. Later on Lokāyata came to be identified with atheistic views that denied the existence of a soul or the next world. Śaṅkara on Vedāntasūtra II. 2. 1 and

(*Continued on the next page*)

yata and that it examines the relative strength of the three other *vidyās* with reasons, and thereby benefits the world, steadies the mind in calamities and prosperity and imparts excellence in intellect, speech and actions. It is always the torch of (sheds light on) all vidyās, it is the means of (inducing to go in for) all undertakings, it is the source of all dharmas. Kauṭilya derives the name from the root 'īkṣ' with 'anu' and he takes it to mean the science of ratiocination. It is somewhat strange that Lokāyata is included in Ānvīkṣikī, one of the subjects of study for the prince. But it appears from the remarks he makes that Kauṭ. uses it only in the sense of logic based on premises derived from ordinary experience (loka) though in later literature Lokāyata came to mean 'nāstika' (atheist, materialist).Acc.[58]

(*Continued from last page*)

III. 3. 53 and 54 states that the Laukāyatikas held the view that consciousness is a quality of the body (and there is no soul over and above the body). The Tantravārtika runs them down as fools and apes (on Jaimini 1. 3. 3). In the Rāmāyaṇa Rāma asks Bharata not to resort to Lokāyatika brāhmaṇas, who, though childish, look upon themselves as learned and who relying on the knowledge acquired by Ānvīkṣikī speak nonsense in spite of the fact that there are principal Dharmaśāstras (that point out the sensible path). कच्चिन्न लौकायतिकान् ब्राह्मणांस्तात सेवसे । अनर्थकुशला ह्येते बालाः पण्डितमानिनः ॥ धर्मशास्त्रेषु मुख्येषु विद्यमानेषु दुर्बुधाः । बुद्धिमान्वीक्षिकीं प्राप्य निरर्थं प्रवदन्ति ते ॥ अयोध्याकाण्ड 100. 38-39. The Kāmasūtra (I. 2. 30) says that the Laukāyatikas hold that a kārṣāpaṇa (copper coin) which one is certain of is better than a niṣka (a gold coin) which is doubtful. वरं सांशयिकान्निष्कादसांशयिकः कार्षापण इति लौकायतिकाः । कामसूत्र I. 2. 30. Rājaśekhara in his Kāvyamīmāṁsā p. 37 (Gaekwad's O. series, ed. of 1934) refers to the opinion of the Laukāyatika logicians that the consciousness in human beings arises from the *bhūtas* (elements) just as the power of intoxication (in wine) is due to the mixture of several ingredients (none of which may by itself be intoxicating). The Nitivākyāmṛta p. 76 remarks "the Lokāyatika view leads to the effectuation of worldly affairs, for the king is able to uproot the thorns of the country by the help of Lokāyata". ऐहिकव्यवहारप्रसाधनपरं लोकायतिकम् । लोकायतज्ञो हि राजा राष्ट्रकण्टकानुच्छेदयति । नीतिवा. p. 76. Vide J. R. A. S. for 1917 p. 175 n. 2, article on लोकायत in J. A. O. S. 1930 p. 132 ff., H. Dh. vol. II p. 359 n.; 'Historical Notices of the Lokāyatas' in the Silver Jubilee vol. of the B. O. R. Institute, Poona pp. 386-397.

58. आन्वीक्षिकी समस्तसाम्परायिकनिरूपणक्षमा हेतुविद्या । विश्वरूप on या. I. 306; आन्वीक्षिक्यां तर्कशास्त्रं वेदान्ताद्यं प्रतिष्ठितम् । शुक्रनीति. I. 153; आन्वीक्षिकी वेदाद्यविरुद्धा आत्मज्ञानोपयोगिनी न्यायविद्या । राजनीतिप्रकाश p. 118. The word आन्वीक्षिकी is derived as अन्वीक्षा प्रयोजनं (फलं) अस्याः इति आन्वीक्षिकी acc. to पाणिनि V. 1. 109. क्षीरस्वामी on अमरकोश explains 'प्रत्यक्षागमाभ्यामीक्षितस्य पश्चादीक्षणमन्वीक्षा सा प्रयोजनं यस्याः', while विश्वनाथ on न्यायसूत्रभाष्य I. 1. 1 'श्रवणादनु पश्चात् ईक्षा अन्वीक्षा उन्नयनं तन्निर्वाहिका सेयमान्वीक्षिकी न्यायतर्कादिशब्दैरपि व्यवह्रियते ।'. Vide नीलकण्ठ on शान्ति 319. 28 for a similar derivation.

to the Amarakośa, Viśvarūpa on Yāj. I. 306, Haradatta on Gaut. (XI. 3), Aparārka and several others Ānvīkṣikī means 'Logic'. Acc. to Kām. II. 7 and 11, the Mit. on Yāj. I. 311, Śukranīti I. 158 it means 'Ātmavidyā' (Metaphysics), while Śukranīti I. 153 and Rājanīti-prakāśa p. 118 combine the two by saying that it is logic that leads on to or is useful for acquiring knowledge of the Self. The Nītimayūkha (p. 34) includes logic and Vedānta in Ānvīkṣikī and Mīmāṁsā and smṛtis under Trayī. The Bārhaspatyasūtra (II. 5-6) advises the king to follow the Laukāyatika doctrines at the time of securing *artha* (wealth) and the Kāpālika-śāstra in achieving his sexual and similar desires.[59]

Great divergence of views prevailed as to the vidyās that were essential for the education of the king. According to the Manusmṛti VII. 43, Śānti. 59.33, Kauṭ. I. 2, Yāj. I. 311, Kām. II. 2, Śukranīti I. 152, Agni. 238.8, the subjects for the king's education are four viz., Ānvīkṣikī, Trayī, Vārtā and Daṇḍanīti. Kauṭ. notes that the school of the Mānavas held the view that the *vidyās* were three and regarded Ānvīkṣikī as a special branch of Trayī; that the Bārhaspatya school was of opinion that they were only two, Vārtā and Daṇḍanīti, since Trayī only acted as a screen (to obscure the intellect) of one (the king) who wants to know the ways of the world; and the Auśanasas regarded Daṇḍanīti as the only vidyā for a king, since according to them, the efforts to learn all vidyās are tied down to it (i. e. are ultimately intended to lead on to the mastery of Daṇḍanīti). It will be seen how the Auśanasas and Bārhaspatyas had an entirely secular view in the science of government and divorced it from the study of sacred books and metaphysics in the case of the king. The Daśakumāracarita VIII (that displays a deep study of Kauṭilya) says that the vidyās for the king are four (catasro rājavidyās-trayīvārtānvīkṣikīdaṇḍanītiḥ). The Bārhaspatyasūtra I. 3 (Daṇḍanītireva vidyā) holds that Daṇḍanīti is the only (essential) vidyā for the king. Kauṭilya further explains that dharma and its opposite are learnt from the three Vedas, viz. Sāmaveda, Ṛgveda and Yajurveda, that the Atharvaveda and Itihāsaveda (i. e. Itihāsa and Purāṇa) are the other Vedas and that the six Aṅgas also (viz. phonetics, ritual, grammar, etymology, metrics and astronomy) are comprehend-

59. सर्वथा लौकायतिकमेव शास्त्रमर्थसाधनकाले । कापालिकमेव कामसाधने । बार्हस्पत्यसूत्र II, 5-6.

ed in the word 'Trayī[60]'. Śukranīti I. 155 says that the 14 vidyās (enumerated in Yāj. I. 3) are comprehended in Trayī. Gaut. XI. 19 expressly says that in doing his duty of making the people observe the rules of the sacred codes the king would have to rely on the Veda, Dharmaśāstras, the Aṅgas, Upavedas and Purāṇa. In the Rāmāyaṇa, Rāma and his brothers are often spoken of as proficient in the Vedas, Vedāṅgas, in Dhanurveda, Gāndharvaveda, Rājavidyā &c. (I. 18. 24 and 26, II. 1.20, II. 2. 34-35, V. 35. 13-14). In the Vanaparva 277. 4 it is said that the princes were proficient in the Vedas with their secret doctrine and in Dhanurveda. In the Ādiparva 221. 72-74 Abhimanyu is said to have learned from Arjuna before he became 16 the Dhanurveda in four sections, the knowledge of *astras*, and the theory and practice of these. Vide also Anuśāsana 104. 146-147. Khāravela in his Hathigumphā Inscription (E. I. vol. XX. p. 79 ll. 2 and 5) states that he learnt Lekha (official correspondence), Rūpa (currency), Gaṇanā (Accountancy) and the administration of justice, when he was the crown prince and also Gāndharvaveda (music). In the Junagadh Inscription of Rudradāman (E. I. vol. VIII at page 44) the Mahākṣatrapa is said to have attained great fame by his deep study, retention, and actual practice of grammar, artha (either lexicography or politics), music, logic and other vidyās and to have been a fine rider of horses, elephants, chariots and a great adept in wielding the sword and shield and in wrestling[61]. The personal attainments of Samudragupta (in Gupta Inscriptions No. 1 pp. 12, 15-16) show how thorough the education of at least some princes was or at least what the ideal about their education was. Vide H. Dh. vol. II. p. 364 for the education of princes and Dr. Beni

60. धर्माधर्मौ त्रय्याम्। अर्थानर्थौ वार्तायाम्। नयानयौ दण्डनीत्याम्। ...... सामर्ग्यजुर्वेदास्त्रयी। अथर्ववेदेतिहासवेदौ च वेदाः। शिक्षा कल्पो व्याकरणं निरुक्तं छन्दो ज्योतिषमिति चाङ्गानि। अर्थशास्त्र I. 2 and 3. In the Raghuvaṁśa XVIII. 50 Kālidāsa speaks of only three princely vidyās and Mallinātha quotes the very words of कौटिल्य cited here and also Kām. II त्रयी वार्ता दण्डनीतिस्तिस्रो विद्या मनोर्मताः। त्रय्या एव विभागोयं येन सान्वीक्षिकी मता॥. It should be noted that the Sāmaveda is here mentioned first. Probably Kauṭilya was a student of that Veda. In the Brāhmaṇas and Upaniṣads Ṛgveda comes first in the enumeration. Itihāsa and Purāṇa are called the fifth Veda in Chāndogya VII. 1. 2. Compare Agnipurāṇa 238, 9 for words similar to धर्माधर्मौ त्रय्याम् etc.

61. शब्दार्थगान्धर्वन्यायाद्यानां विद्यानां महतीनां पारणधारणविज्ञानप्रयोगावाप्तविपुलकीर्तिना तुरगगजरथचर्यासिचर्मनियुद्धाद्य ...... (broken) परबललाघवसौष्ठवक्रियेण &c. E. I. vol. VIII p. 44 l. 13.

Prasad's 'Theory of Government in Ancient India' p. 218 for an ideal course of education for a prince quoted from the Buddhist work, Sūtrālaṅkāra of Aśvaghoṣa. The Nītivākyāmṛta[62] adds a long list of the accomplishments which a prince should possess viz. all scripts, valuing of jewels, knowledge of arms &c. On reading the ideal courses prescribed for the education of the prince by ancient Indian writers one cannot help feeling that they were probably actuated by the same sentiments that are attributed to Socrates by Plato in his 'Republic' (tr. by Jowett, ed. of 1875, vol. III. p. 357) viz. 'Until philosophers are kings or the kings and princes of this world have the spirit and power of philosophy and political greatness and wisdom meet in one and these commoner natures who follow either to the exclusion of the other are compelled to stand aside, cities will never cease from ill-no, nor the human race as I believe-and then only will our State have a possibility of light and behold the light of day &c.' The Agnipurāṇa (225. 1-4) prescribes that the prince should be taught dharmaśāstra, kāmaśāstra, arthaśāstra, science of archery (dhanurveda), the various arts and crafts by trusted teachers, that he should not be allowed to be associated with those who are angry with the king or disrespected by him or who are greedy and that if it is impossible to impart good qualities to him he should be confined, surrounded by pleasures. The princes were sometimes educated in their own capital or in a nearby college. Vide H. Dh. vol. II. p. 364. Sometimes, it appears, princes went to such famous seats of learning as Takṣaśilā (vide Jātakas ed. by Fausböll II. 87, 278, 319, 323, 400, III. 158, 168, 415, 463). The subjects of study there were the three vedas and 18 śilpāni or vidyās (Jātakas, vol. II. 87, III. 115). Kauṭilya (I. 4) explains that Vārtā is constituted by agriculture, the rearing of cattle and trade; it benefits (the State) by bringing in grain, cattle, gold, baser metals, and free labour; by means of vārtā the king secures treasury and army whereby he brings under control his own side and the enemy. In the Sabhāparva[63] 5. 79 and Ayodhyākāṇḍa 100. 47 it is declared

62. शिक्षालापक्रियाक्षमः राजपुत्रः सर्वासु लिपिषु प्रसंख्याने पदप्रमाणप्रयोगकर्मणि नीत्यागमेषु रत्नपरीक्षायां संभोगप्रहरणोपवाह्यविद्यासु च । नीतिवा. p. 161.

63. वार्तायां संश्रितस्तात लोकोयं सुखमेधते ॥ सभा. 5. 79, अयोध्या 100. 47; पण्याकरवणिज्याभिः कृष्या गोजाविपोषणैः । वार्तया धार्यते सर्वं धर्मैरेतैर्द्विजातिभिः ॥ वनपर्व 150. 30; वार्तामूलो ह्ययं लोकस्त्रय्या वै धार्यते सदा ॥ शान्ति 68. 35; नहि वर्तेद्ध्रुवं लोको वार्ताहस्त्वस्य केवलम् । शान्ति. 263. 3; वार्तासमृद्धौ सर्वाः समृद्धयो राज्ञः । तस्य खलु संसारसुखं यस्य कृषिर्धेनवः शाकवाटः सद्मन्युदपानं च । नीतिवा. p. 93.

that when the world relies on vārtā it easily prospers. The Śānti-parva (263. 3) gives the warning that this world would cease to exist if vārtā was given up, that this world is rooted in vārtā and is sustained by the three vedas (68. 35). The Vanaparva (150. 30) states that the whole world is sustained by vārtā i. e. by merchandise, mines, trade, agriculture and tending cows, she-goats and ewes. The Nītivākyāmṛta (p. 93) after defining vārtā as above emphasizes that the king secures the abundance of everything when vārtā is prosperous and that the man who has his own agriculture, milch-cattle, plot for growing vegetables and a well in his own house has indeed all the pleasures of this world. These quotations indicate what importance was attached to agriculture and the economic structure of society. The result is that in the Arthaśāstra economic matters occupy a very large space.

Kauṭilya (I. 5) starts by saying that the three vidyās (except daṇḍanīti) in the case of the prince depend upon daṇḍa, that daṇḍa in its turn is based upon discipline, which is of two kinds, natural and induced (or acquired). Vidyās produce discipline (of the 2nd kind) in him who possesses the qualities of intellect specified above. Then he goes on to say that the prince should learn the alphabet and arithmetic after his *caula* is performed (in the 3rd year or later) and after *upanayana* he should learn the three vedas and ānvīkṣikī from the *śiṣṭas* (those learned in the veda), vārtā from the heads or superintendents (of the various departments thereof) and daṇḍanīti from expounders (of the *vidyā*) and from practical politicians. Vide Manu VII. 43 (=Matsya 215. 54 and Agni 225. 21–22) for directions as to from whom the prince was to learn the four vidyās. Kauṭilya prescribes that the prince should study these up to the 16th year, should then marry and that in order to foster the growth of the discipline of the intellect he should always associate with those who are advanced in the vidyās enumerated above (after his 16th year) and that the king should spend the first part of the day in practising the riding of elephants, horses, chariots and in the science of arms and the latter part of the day in listening to Itihāsa which comprises Purāṇa, history, stories, panegyrics, dharmaśāstra and arthaśāstra. A king whose intellect is thus disciplined and who is devoted to disciplining his subjects also and to doing good to all will be the sole ruler of the earth. The Nītivākyāmṛta (p. 162) defines *vinaya* as 'acting with humility towards those

who excel in vratas, vidyās and are aged.' Manu VII. 38-39. Kām. I. 19-20 and 59-63, Śukra I. 92-93 (taken from Kām. I. 19-20) extol the value and importance of *vinaya* and waiting upon the aged and the learned. Manu (VII. 40-42) states that many kings perished with their vast paraphernalia through want of discipline while others, though residing in a forest (i. e. without an army &c.), gained kingdoms through vinaya, and names Vena, Nahuṣa, Sudās son of Pijavana and Sumukha Nimi as those who perished through lack of *vinaya* and gives Pṛthu and Manu as examples of those who secured kingdoms through *vinaya.* Matsya 215.53 is the same as Manu VII. 40. Ancient Indian writers harp on the education of the prince so much because their ideal of kingship was that the king should be a *rājarṣi* (a royal sage). Kālidāsa frequently speaks of this e. g. in Śākuntala II. 14 and Raghuvaṁśa (I. 58). They were aware, like Socrates, that until either philosophers became[64] kings or kings philosophers States will never succeed in remedying their short-comings (vide p. 50 above). Not only was an extensive course of intellectual training prescribed for the king, but both dharmaśāstra and arthaśāstra works strongly and frequently insist upon the necessity of moral discipline and the right direction of the emotions and will in the case of the king.

Kauṭilya (I. 6) emphasizes that control of the organs of sense is the cause of (proficiency in) vidyās and discipline should be attempted by giving up the six enemical tendencies viz. lust, hot temper, greed, vanity (*māna*), haughtiness or insolence (*mada*), overjoy. He says that (the whole purpose or insistence of) all śāstras is the restraint of the senses, that even a supreme ruler of the whole earth up to its four borders whose senses are not under control will at once perish and cites two examples on each of these six tendencies, viz. Dāṇḍakya Bhoja who attempted to rape a brāhmaṇa girl through lust and perished with his kingdom and kinsmen and Karāla king of Videha; Janamejaya (perished) who attacked brāhmaṇas through hot temper and Tālajaṅgha who did so against the Bhṛgus; Aila who exacted through greed excessive taxes from persons of the four varṇas and Ajabindu, the king of Sauvīra; Rāvaṇa who did not restore another's wife through his conceit and Duryodhana who did not give even a part from his kingdom; Dambhodbhava who despised all beings through his insolence and

64. The word 'philosopher' used by Plato has not the narrow meaning of modern times.

Arjuna of the Haihaya dynasty; Vātāpi through overjoy when he attacked Agastya and also the oligarchy of the Vṛṣṇis when they attacked Dvaipāyana[65]. These six evil tendencies are called *śatru-ṣaḍ-varga* or *ari-ṣaḍvarga*. Kauṭilya adds that by the conquest of these six evil tendencies Jāmadagnya (Paraśurāma) and Ambarīṣa enjoyed the earth for a long time. Kām. (I. 55–58) and Śukra. I. 144–146 give six of the twelve examples of Kauṭ. and Kām. I. 58 is the same as the last verse of Kauṭilya I. 6. Vide Mārkaṇḍeya 27. 12–13. In the Vāsavadattā of Subandhu (Hall's ed. pp. 273–276) there is a long list of the kings of antiquity (Purūravas, Nahuṣa, Yayāti, Sudyumna, Nala and nine others) who suffered owing to some failing or other in themselves. The Udyogaparva (74. 13–18) mentions by name 18 kings who by their evil career destroyed themselves, their friends and relatives (such as Mudāvarta of the Haihayas, Janamejaya of the Nīpas, Bahula of Tālajaṅghas, Dhautamūlaka of the Cīnas). This shows that Cīna does not probably stand for modern China in the epic. Manu VII. 44 (=Matsya 215. 55) also emphasizes the necessity for the king incessantly to curb the senses and not to fall a prey to vices arising from *kāma* and *krodha*. Manu (VII. 45–48) enumerates ten vicious tendencies due to kāma (desire for pleasures) viz. hunting, gambling, sleep by day, finding fault (with others), women, drunkenness, (excessive indulgence in) dancing, singing and instrumental music, and aimless wandering; and eight vicious tendencies due to krodha (hot temper) viz. tale-bearing, violence, treachery, envy, slander, (improper) seizure of property, reviling and assault. Manu further declares (VII. 50) that among the vices due to *kāma*, drinking wine, gambling, women and hunting are the most harmful, each preceding one being worse than each succeeding

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65. Most of these stories occur in the Mahābhārata, Purāṇas, and Buddhist works. Vide Jolly's ed. of the Kautilīya vol. II. p. 5. But the story of the Vṛṣṇis and Dvaipāyana is not known. For Janamejaya (different from the descendant of Arjuna, the Pāṇḍava) incurring the sin of brāhmaṇa-killing, vide Śānti 150. 3. For Arjuna (called Kārtavīrya) king of Haihayas, vide Sabhāparva 22. 24, Vanaparva 115. 12, Anuśāsana 153. 3 ff, Śānti 49. 35 ff. and Āśvamedhikaparva 29, Matsyapurāṇa 43, Vāyu 94. For Agastya and Vātāpi vide Vanaparva 96. In the Mārkaṇḍeya the instances of kings that came to grief through *kāma, krodha, lobha* &c. are different except that of Aila (chap. 27. 14–17). For Dambhodbhava vide Sabhā 22. 24 and Udyoga 96. 7 (cr. ed. 94. 7). For the story of Daṇḍa who raped a maiden of the Bhṛgu family vide Rāmāyaṇa VII. 80–81. Dāṇḍakya Bhoja is mentioned (along with Rāvaṇa and Kīcaka) by the Kāmasūtra I. 2. 44–45.

one and (VII. 52) that among the vices due to hot temper, causing physical injury, reviling and deprivation of wealth are the worst. Manu (VII. 52) has a sly hit that these seven vices are more or less prevalent among kings (*sarvatraivānuṣaṅginaḥ*) and therefore the only choice is that of the lesser or least of evils Kauṭilya (VIII. 3) has a lengthy disquisition on the views of his predecessors about the relative harmfulness of the three vices due to hot tempor and of the four due to *kāma* and states his own opinion that *arthadūṣaṇa* meaning loss of the means of livelihood by gifts, exactions (by the king), loss or abandonment of property is more harmful than reviling and daṇḍapāruṣya is more harmful than arthadūṣaṇa. He points out the benefits derived from hunting viz. exercise, the disappearance of phlegm, bile. fat and sweat, the acquisition of skill in aiming at stationary and moving bodies, the ascertainment of the minds of beasts when they are provoked and occasional travel.[66] These are echoed, almost in the same words by Kām. XIV. 25 and in the Śākuntala (II. 25) by Kālidāsa. Vide Sabhā 68. 20, Udyoga 33. 92 for the seven principal vices. Kām. (XIV. 6 and 7) enumerates the three vices of hot temper and the four of *kāma* and holds an elaborate discussion on their respective demerits. He defines arthadūṣaṇa (XIV. 17) somewhat differently (viz. as the abandoning of an important object or of great wealth in order to show that what really merits blame is not so). Vide the Viṣṇudharmottara II.65.12–15 for the two meanings of arthadūṣaṇa[67]. Kām. does not agree that hunting has many good points in its favour and advises the king to prepare a separate well-guarded hunting ground of one-half *yojana* in length and breadth if he really desires to hunt (XIV. 28–42). The Mānasollāsa (vol. II) in the 15th chapter of the 4th viṁśati deals with hunting as a sport for kings and points out how a forest is to be preserved for royal hunting and how it is to be guarded and enumerates 31 methods of hunting. Kām. warns the king who wants to retain

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66. मृगयायां तु व्यायामः श्लेष्मपित्तमेदस्स्वेदनाशश्चले स्थिरे च काये लक्षपरिचयः कोपस्थाने हि तेषु च मृगाणां चित्तज्ञानमनित्ययानं चेति । कौटिल्य VIII. 3; जितश्रमत्वं व्यायाम आममेदकफक्षयः । चरस्थिरेषु लक्ष्येषु बाणसिद्धिरनुत्तमा ॥ मृगयायां गुणानेतानाहुरन्ये न तत्क्षमम् । दोषाः प्राणहराः प्रायस्तस्मात्तद्व्यसनं महत् ॥ काम. XIV. 25–26. The reading कोपभयस्थाने in some Mss. of the Kauṭiliya is preferable in view of Kālidāsa's words 'चित्तं भयक्रोधयोः.'

67. Vide the विष्णुधर्मोत्तर (II. 65. 12–15) 'अर्थस्य दूषणं राम द्विप्रकारं विवर्जयेत् ॥ अर्थानां दूषणं चैकं तथा चार्थेन दूषणम् । प्राकाराणां समुच्छेदो दुर्गादीनां समाक्रिया ॥ अर्थानां दूषणं प्रोक्तं विप्रकीर्णत्वमेव च । अदेशकाले यद्दानमपात्रे दानमेव च ॥ अर्थेस्तु दूषणं प्रोक्तमसत्कर्मप्रवर्तनम् । '

his kingdom against fondness for women (XIV. 57–58). He further says that a king may even indulge in fondness for women and may even drink moderately, but he must totally avoid gambling and hunting (XIV. 65). Kauṭilya regards gambling as the worst of the vices for a king (VIII. 3 last sentence in prose). In the Daśakumāracarita (VIII) there is an elaborate (but ironical) description of the mental and other benefits derived from the four principal vices due to *kāma*. Kām. I. 54 states that hunting, gambling and wine in the case of kings must be condemned, since calamities befell Pāṇḍu, Nala and the Vṛṣṇis (respectively) by being addicted to these. Even an ideal king like Rāma was fond of hunting. Śukra (I. 332–333) points out that hunting has much in its favour, but there is one great defect in it viz. slaughter of animals. Śukra (I. 109–119) denounces gambling, drinking and fondness for women as the worst of vices and points out that Indra, Daṇḍakya, Nahuṣa and Rāvaṇa came to grief through their passion for women (I. 114) and that a king who is excessively fond of dancers, singers, courtesans, wrestlers, eunuchs and men of low birth falls an easy prey to his enemies (I. 128). Kām. (I. 40–46, which are almost the same as Śukra I. 102–107) gives a poetic description of how animals like the deer, the elephant, the moth, the fish and the bee meet death or become confined by extreme attachment to one only out of the five objects of sense and emphasizes that man who can and does enjoy all the pleasures of the five senses must practise great restraint.

CHAPTER III

DUTIES AND RESPONSIBILITIES OF THE RULER.

All works are agreed that the first and foremost duty of the king is the protection of subjects. Śāntiparva (68. 1–4) notes that all the seven expounders of polity (rājaśāstrapraṇetāraḥ) named by it extol protection as the highest *dharma* of the king. Manu VII. 144 states that the protection of subjects is the highest dharma and Kālidāsa in Raghuvaṁśa 14.67 alludes to this dictum of Manu. Protection consists in punishing internal aggression (such as by thieves and robbers and by persons who invade a man's rights) and in meeting external[68] aggression. Vide quotation from Bṛhaspati below. Gautama (X. 7–8) prescribes that the special responsibility of the king is to protect all beings, to award just punishment and that he has to protect the several varṇas and āśramas according to the rules of śāstra and to bring them round to the path of their proper duties when they swerve from it (XI. 9–10). Vasiṣṭha (19. 1–2) states that the wise say that protection is a life-long *sattra* in which he has to give up fear and softness of heart. Vas. 19. 7–8 and Viṣṇu Dh. S. III. 2–3 are similar to Gaut. XI. 9–10. The Śāntiparva (23.15) repeats a *gāthā* of Bṛhaspati 'As a snake swallows mice lying in holes, so the earth swallows these two viz. a king who does not fight (an invader) and a brāhmaṇa who does not go on a journey (for acquiring knowledge from famous teachers)[68a]. Manu IX. 306 states that the king protecting his subjects according to the śāstra and meting out punishment to those who deserve it performs every day sacrifices in which the fees are one hundred thousand cows (i. e. he secures the spiritual reward of very solemn sacrifices). Yāj. I. 335 is to the same effect. Kauṭilya also lays emphasis on the duty to keep the varṇas and āśramas to their duties 'Therefore the

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68. बृहस्पतिः । तत्प्रजापालनं प्रोक्तं त्रिविधं न्यायवेदिभिः । परचक्राच्चोरभयाद्बलिभोऽन्यायवर्तिनः ॥ परानीकस्तेनभयमुपायैः शमयेन्नृपः । बलवत्परिभूतानां मत्स्यं न्यायदर्शनैः ॥ quoted by राजनीतिप्र. pp. 254–255.

68a. भूमिरेतौ निगिरति सर्पो बिलशयानिव । राजानं चाविरोद्धारं ब्राह्मणं चाप्रवासिनम् ॥ शान्ति 23. 15. This is attributed to Uśanas in Śānti 57. 3 (but the words are द्वाविमौ ग्रसते भूमिः सर्पो &c). Vide also Sabhā 55. 14. The same verse is शुक्रनीतिसार IV. 7. 303.

king should not allow the people to swerve from their duties. He, who keeps dharma intact (without breach), enjoys bliss in this world and the next'. Nārada[69] (prakīrṇaka 33) states 'His duty is to protect the subjects, to (honour or) listen to the aged and the wise, to look into the disputes of people and to be energetic in his functions as king'. Śukra (I. 14) says that the highest dharma of the king is to protect the subjects and to put down the wicked. According to Atri (verse 28),[70] to punish the wicked, to honour the good, to increase the treasury in the right way, to deal impartially with litigants and to protect the kingdom—these five are declared to be sacrifices in the case of kings. The Viṣṇudharmottara (III. 323. 25-26) refers to the five sacrifices in very similar words. In Śānti 77. 33 the king's duty to restrain brāhmaṇas from engaging in unworthy actions is specially emphasized. These passages establish that the principal duties of the king were conceived to be to protect the subjects, to see that the rules of varṇas and āśramas were carried out by them, to punish the wicked and to do justice.

The duty to protect involved fighting and probable death. Therefore the ancient works on dharma-śāstra always insist that it is the duty of the kṣatriya to fight and that death on the battlefield is to be his highest ideal. Manu (VII. 87-89) enjoins upon the king, when protecting his subjects against invasion, not to run away from battle and promises heaven as the reward for kings who die fighting in battle. Yāj. I. 324 holds forth the same reward for all soldiers who are killed in battle. Vide Strīparva 2.16 and 18 and 11. 8-9. The Bhagavadgītā (II. 31-37) most solemnly declares that there is nothing higher for a kṣatriya than a righteous war, that a kṣatriya's duty requires him not to quail in battle, that if he dies in battle he goes to heaven and if he survives he rules over the world, that he should fight as a duty without caring for gain or loss, victory or defeat and if he fights with this attitude no sin attaches to him. Śāntiparva 78. 31 states that just as those who join in the bath of the king at the end of the Aśvamedha are purified of all sins, so all

69. तस्य धर्मः प्रजारक्षा वृद्धप्राज्ञोपसेवनम् । दर्शनं व्यवहाराणामुत्थानं च स्वधर्मसु ॥ नारद (प्रकीर्णक 33); नृपस्य परमो धर्मः प्रजानां परिपालनम् । दुष्टनिग्रहणं नित्यं न नीत्या ते विना शुभे ॥ शुक्र० I. 14.

70. दुष्टस्य दण्डः सुजनस्य पूजा न्यायेन कोशस्य च संप्रवृद्धिः । अपक्षपातोऽर्थिषु राष्ट्ररक्षा पञ्चैव यज्ञाः कथिता नृपाणाम् ॥ अत्रि verse 28; compare दुष्टदण्डः सतां पूजा धर्मेण च धनार्जनम् । राष्ट्ररक्षा समत्वं च व्यवहारेषु पञ्चकम् ॥ भूमिपानां महायज्ञाः सर्वकल्मषनाशनाः । विष्णुधर्मोत्तर III. 323. 25-26.

soldiers (of whatever caste and on whatever side) killed in battle become pure by the destruction of their sins. Manu (VII. 94–95) sets out the results for a soldier when he flees from the battlefield. Parāśara[71] III. 37 says "Two men pierce the orb of the sun (i. e. reach heavenly worlds) viz. an ascetic endowed with Yoga and a soldier killed while facing the enemy" and the following verses (III. 38 ff) dilate upon how the slain warrior is waited upon in heaven by divine damsels. A verse of the Ṛgveda X. 154. 3 (= Atharva 18. 2. 17) appears to hold that warriors losing life in battle reap the same rewards that those who make gifts of a thousand cows in sacrifices secure.[72] It is probably this passage which Kauṭilya has in mind when in X. 3 he refers to the Veda for inciting the soldiers to fight without regard to life. Āp. Dh. S. (II. 10. 26. 2–3) states that a king, who strives to recover the wealth of brāhmaṇas (stolen by thieves) and dies in the effort, is said to perform a sacrifice, in which his body is the sacrificial post and the fees are incalculable and that other valiant men losing life in fighting for a (good) cause are in a similar position. To die fighting for the protection of cows and brāhmaṇas is specially commended (vide Śānti 21. 19 and 77. 28 and 30). The Viṣṇudharmasūtra III. 44–46 prescribes 'there is no duty for kings equal to losing one's life in battle; those who meet death in protecting a cow, a brāhmaṇa, a king, a friend, their own wealth and their wife enter heaven as also those who meet death in preventing confusion of varṇas (caused by adultery &c.).' On the eve of battle the great warrior Bhīṣma says to his officers 'it is a sinful act for a kṣatriya to die in his house from some disease; the ancient code of conduct for him is that he should meet death from steel' (Bhīṣmaparva 17. 11). The same idea is presented in Śalyaparva 5. 32, Śānti 97. 23 and 25.

Kāmandaka[73] (V. 82–83) makes it clear that the subjects require protection against the king's officers, thieves, enemies of the king, royal favourites (like the queen and the princes) and

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71. द्वाविमौ पुरुषौ लोके सूर्यमण्डलभेदिनौ । परिव्राड्योगयुक्तश्च रणे चाभिमुखे हतः ॥ पराशर III. 37, quoted by मेधातिथि on मनु VII. 89. The same is उद्योगपर्व 33. 61 which reads पुरुषव्याघ्र in the first *pāda*.

72. ये युध्यन्ते प्रधनेषु शूरासो ये तनूत्यजः । ये वा सहस्रदक्षिणास्तांश्चिदेवापि गच्छतात् ॥ ऋ. X. 154. 3 = अथर्व 18. 2. 17. This also is quoted by मेधा. on मनु VII. 89. अर्थशास्त्र (X. 3) has 'वेदेष्वप्यनुश्रूयते — समाप्तदक्षिणानां यज्ञानामवभृथेषु सा ते गतिर्या शूराणामिति'.

73. आयुक्तकेभ्यश्चोरेभ्यः परेभ्यो राजवल्लभात् । पृथिवीपतिलोभाच्च प्रजानां पञ्चधा भयम् ॥ पञ्चप्रकारमप्येतदपोह्यं नृपतेर्भयम् । कामन्दक V. 82–83.

the greed of the king himself. As an extension of the king's duty to protect, the works lay down that it is his duty to support students, learned brāhmaṇas, and sacrificers.[74] Vide Gaut. X. 9–12, XVIII. 31, Kauṭ. II. 1, Anuśāsana 61. 28–30, Śānti 165. 6–7, Viṣṇudharmasūtra III. 79–80, Manu VII. 82 and 134, Yāj. I. 315 and 323 and III. 44, Matsya 215. 58, Atri 24. The Hindu kings of ancient and medieval India followed this advice with great liberality for centuries and the subject has already been treated in vol. II. pp. 113, 856–864. The functions of Government were not supposed to end with the maintenance of peace and order, but Government must be an instrument of the diffusion of culture. The king is also called upon to support helpless and aged people, the blind, the cripple, lunatics, widows, orphans, those suffering from diseases and calamities, pregnant women by giving them medicines, lodging, food and clothing according to their requirements[75]. Vide Vas. 19. 35–36, Viṣṇudharmasūtra III. 65, Matsya 215. 62, Agni 225. 25, Ādiparva 49. 11, Sabhā 18. 24, Virāṭaparva 18. 24, Śānti 77. 18. The Rājanīti-prakāśa (pp. 130–131) quotes[76] the Viṣṇudharmottara requiring the king to honour and protect chaste women (pativratās) and Śaṅkha-Likhita to the effect that even kṣatriyas and vaiśyas who cannot maintain themselves by the methods prescribed by the śāstras for them should approach the king who should help them with the means of livelihood and they should work for the king in the manner laid down for them and that śūdras also should apply their skill and crafts for the benefit of the king when so maintained.[77] Medhātithi on Manu V. 94 states that when a king supports his subjects in a famine by distributing food from his treasury no question of his being in mourning would come in the way. These provisions for the old, the blind, the widows, orphans and helpless persons and for the relief of unemployed kṣatriyas, vaiśyas and śūdras strike one as

74. ऋत्विगाचार्यपुरोहितश्रोत्रियेभ्यो ब्रह्मदेयान्यदण्डकराण्यभिरूपदायकानि प्रयच्छेत् । ... ... बालवृद्धव्याधितव्यसन्यनाथांश्च राजा बिभृयात् । स्त्रियमप्रजातां प्रजातायाश्च पुत्रान् । कौटिल्य II. 1.

75. कृपणानाथवृद्धानां विधवानां च योषिताम् । योगक्षेमं च वृत्तिं च नित्यमेव प्रकल्पयेत् ॥ शान्ति 86. 24 (= मत्स्य 215. 62 = अग्निपुराण 225. 25 with slight variations); कृपणातुरानाथव्यङ्गविधवाबालवृद्धानौषधावसथाशनाच्छादनैर्बिभृयात् । शङ्खलिखितौ quoted in राजनीतिप्र. p. 138; कच्चिदन्धांश्च मूकांश्च पङ्गून् व्यङ्गानबान्धवान् । पितेव पासि धर्मज्ञ तथा प्रव्रजितानपि ॥ सभा 5. 124.

76. साध्वीनां पालनं कुर्यात्पूजनं च महीपतिः । एकपत्न्यः स्त्रियः सर्वा धारयन्ति जगत्त्रयम् ॥ राजनीतिप्र. p. 130.

77. राजन्यवैश्यावप्यजीवन्तौ राजानमुपतिष्ठेयातां तावुभौ शक्तितः संविभक्तावुपकुर्यातां स्वस्वधर्मानुष्ठानेन । शिल्पिनः कारवश्च शूद्राः ॥ शङ्खलिखितौ quoted in राजनीतिप्र. p. 141.

rather modern in tone. In many modern countries the State has become the means of providing services for the greater part of its subjects, not only armed forces and the police, but social services such as education, public health, medical attendance, insurance against unemployment, old age, widowhood, and orphanage, relief of poverty &c. In ancient India, though there were naturally no Acts of Parliament guaranteeing the above services to the subjects, public opinion, the views of eminent writers and the practice of the best kings created an atmosphere in which it was thought that it was imperative for the king representing the State and its resources to encourage learning, to care for the blind, the decrepit, the old and the widowed and to give employment to those who were unemployed. Aśoka constructed hospitals for men and animals (2nd Rock Edict at Kalsi in C. I. I. vol. 1, p. 28), alms-houses, rest houses, watering places, shady trees on the highways and irrigation works, visited and supported the aged (8th Girnar Rock Edict in C. I. I. p. 15). In the 2nd century B. C. Khāravela, emperor of Kaliṅga, declares in his Hāthigumphā Inscription (E. I. vol. XX p. 71 at p. 86) that in the very first year of his reign he constructed embankments round the Khibīra lake in the Kaliṅga capital and renovated all public gardens. Rudradāman in the 2nd century A. D. repaired the Sudarśana lake at great cost from his own treasury without levying fresh taxes or benevolences (*praṇaya*) or forced labour. The Anuśāsanaparva says that good kings should[78] construct meeting halls, *prapās*, tanks, temples and lodging places for brāhmaṇas. The Matsyapurāṇa 215. 64 remarks that the king should give to those who stay in hermitages food, oil and pots. Vide Āp. Dh. S. II. 2. 4. 21 and Haradatta thereon as to provision for śūdra guests. It is quite possible that these rules of the texts were not literally followed by all kings, but it is well-known how even legislative enactments are carried out by the subordinate staff in all countries including those of the West. One has only to turn to Dickens' 'Oliver Twist' for some indication of the administration of Poor Laws and work-houses in England about a hundred years ago.

As regards the king's daily routine Kauṭ. I. 19, Manu VII. 145-147, 216-226, Yāj. I. 327-333, Śukranīti I. 276-285, Agnipurāṇa 235, Viṣṇudharmottara II.151, Bhāgavata X.70.4-17, Nītiprakāśikā VIII. 9 ff, Rājanītiprakāśa pp. 153-169 and other works lay down

78. शालाप्रपातडागानि देवतायतनानि च । ब्राह्मणावसथाश्चैव कर्तव्यं नृपसत्तमैः ॥ अनुशासनपर्व quoted in परा. मा. I. part. 1. p. 406.

detailed rules, which have been already set out (H. of Dh. vol. II pp. 805–806). Every day on rising from his bed the king was advised (by Manu VII. 37) to wait upon brāhmaṇas learned in the three Vedas and endowed with wisdom and to abide by their directions. Vas. I. 39–41, Gaut. XI. 13–14 say the same. In giving this advice exaggerated claims were made for brāhmaṇas which have been already set out before. Vide H. Dh. vol. II pp. 135–136 and Anuśāsana 33. 2–8. The king was also expected to show himself to all people every day (Ayodhyā 100. 51, Sabhā 5. 90)[79].

An extremely high ideal was placed before the king by the Kauṭilīya, the Mahābhārata and other works. In the Artha-śāstra I. 19 Kauṭilya[80] proclaims the magnificent ideal 'in the happiness of the subjects lies the happiness of the king, in their welfare lies his welfare; the good of the king does not consist in what is pleasing to himself, but what is pleasing to the subjects constitutes his good'. Similar words occur in the Viṣṇudharmasūtra III. last verse.[81] The Mahābhārata (Śānti 69. 72–73) purports to quote two verses of Aṅgiras (i.e. Bṛhaspati), one of which says 'of what use is *tapas* to that king or of what use are even sacrifices to him who has well looked after his subjects? He is surely one who knows all dharmas.' Kauṭilya compares the king to the performer of a sacrifice, in which his *vrata*[82] (in the case of the sacrificer observances about food, scratching the body &c.) consists in being ever active, the sacrifice consists in issuing orders for carrying out the business (of the State), the sacrificial fee (that the king pays) is his

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79. कच्चिद्दर्शयसे नित्यं मनुष्यान्समलंकृतः । सभापर्व 5. 90.

80. राज्ञो हि व्रतमुत्थानं यज्ञः कार्यानुशासनम् । दक्षिणा वृत्तिसाम्यं च दीक्षितस्याभिषेचनम् ॥ प्रजासुखे सुखं राज्ञः प्रजानां च हिते हितम् । नात्मप्रियं हितं राज्ञः प्रजानां तु प्रियं हितम् ॥ अर्थशास्त्र I. 19.

81. प्रजासुखे सुखी राजा तद्दुःखे यश्च दुःखितः । स कीर्तियुक्तो लोकेस्मिन् प्रेत्य स्वर्गे महीयते ॥ विष्णुधर्मसूत्र III. last verse quoted in राजधर्मकाण्ड p. 15; कृत्वा सर्वाणि कार्याणि सम्यक् संपाल्य मेदिनीम् । पालयित्वा तथा पौरान् परत्र सुखमेधते ॥ किं तस्य तपसा राज्ञः किं च तस्याध्वरैरपि । सुपालितप्रजो यः स्यात्सर्वधर्मविदेव सः ॥ शान्ति. 69. 72–73. These words remind one of the famous proclamation of Queen Victoria in 1857 (called an impossible charter by a notably energetic but retrograde Viceroy) which breathes the same high and noble sentiments 'in their prosperity will be our strength, in their contentment our security and in their gratitude our best reward'.

82. Vide Āp. Śr. X. 12–15, Baud. Śr. VI. 6 for long lists of observances (*vratas*) some of which are set out in H. Dh. vol. II. pp. 1139–1140 and *ibid*. p. 1135 for the bath of the sacrificer.

impartiality to all (lit. behaving in the same way to all), and his coronation corresponds to the bath of the person who is consecrated for a sacrifice. Śāntiparva[83] (56. 44 and 46) and Nītiprakāśikā VIII. 2 declare that a king like a pregnant woman should not do what is pleasing to him, but what would conduce to the good of the people and the ancient dharma for a king is to keep the subjects contented. In Śānti 90. 1 and 5 it is said 'the king is there for the upholding of dharma and not for acting as he likes and that all beings have to depend on dharma which in its turn depends on the king'. In Udyogaparva 118. 13–14 a king exclaims 'the wealth I possess is for the benefit of the urban and rural population and not for my own enjoyment; for, that king who at his sweet will gives away what (really is not his but) belongs to others does not become endowed with spiritual merit nor with fame'. King Marutta is warned by his grand-mother in the Mārkaṇḍeya[84] (130. 33–34) that the king's body is not meant for pleasures but for undergoing great trouble in protecting the earth and carrying out his duties. Ancient writers loved to dwell upon the rule of the king as paternal. Kauṭ. II. 1 states that the king should favour like a father those who are outside the rules for remission of taxes. Yāj. I. 334 requires the king to be like a father to his subjects and servants. Vide Śānti 139. 104–105 for the same idea.[85] In the Rāmāyaṇa II. 2. 28–47 and V. 35. 9–14 the virtues of the prince Rāma are set out in great detail, where it is said that Rāma behaved like a father (II. 2. 39), that he sympathized with the people in their sorrows and was pleased like a father when the subjects celebrated festivals. The Rāmāyaṇa[86] III. 6. 11 declares that it would be a great *adharma* on the part of that king who takes a

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83. लोकरञ्जनमेवात्र राज्ञां धर्मः सनातनः । शान्ति. 57. 11; यथा हि गर्भिणी हित्वा स्वं प्रियं मनसोऽनुगम् । गर्भस्य हितमाधत्ते तथा राज्ञाप्यसंशयम् ॥ वर्तितव्यं कुरुश्रेष्ठ सदा धर्मानुवर्तिना । स्वं प्रियं तु परित्यज्य यद्यल्लोकहितं भवेत् ॥ शान्ति. 56. 45–46; the first is नीतिप्रकाशिका VIII. 2 which reads the last pāda तथा कुर्यात्प्रजाहितम्. धर्माय राजा भवति न कामकरणाय तु । ... धर्मे तिष्ठन्ति भूतानि धर्मो राजनि तिष्ठति ॥ शान्ति. 90. 1 and 5. पौरजानपदार्थं तु ममार्थो नात्मभोगतः ॥ कामतो हि धनं राजा यः पारक्यं प्रयच्छति । न स धर्मेण धर्मात्मन्युज्यते यशसा न च ॥ उद्योग 118. 13–14.

84. राज्ञां शरीरग्रहणं न भोगाय महीपते । क्लेशाय महते पृथ्वीस्वधर्मपरिपालने ॥ मार्कण्डेय 130. 33–34.

85. पिता माता गुरुः शास्ता वह्निर्वैश्रवणो यमः । सप्त राज्ञो गुणानेतान्मनुराह प्रजापतिः । पिता हि राजा लोकस्य प्रजानां योऽनुकम्पिता । शान्ति 139. 104–105.

86. अधर्मः सुमहान्नाथ भवेत्तस्य महीपतेः । यो हरेद् बलिषड्भागं न च रक्षति पुत्रवत् ॥ अरण्यकाण्ड 6. 11.

sixth part of the produce (of fields) and does not protect his subjects as if they were his children. These sentiments are echoed by classical poets like Kālidāsa in the Śākuntala V. 5 and VI. 23 and the Raghuvaṁśa (I. 24). In the Harṣacarita (V) the dying king Prabhākaravardhana consoles his young and favourite son Harṣa by exhorting him to reflect over the idea that kings are to be deemed to have relatives in their subjects and not merely in agnates.[86a] Aśoka also in his Edicts harps on the paternal relation 'all men are my children' (the first separate Jaugadh Edict, C. I. I. vol I pp. 111 and 114).

There were, it appears, several grades of rulers from the most ancient times. The word *rājan* occurs in numerous places in the Ṛgveda. It is applied to such gods as Mitra and Varuṇa (Ṛg. VII. 64. 2), Varuṇa (Ṛg. I. 24. 12 and 13, X. 173. 5). It appears to be used in two senses, viz. (1) 'king' as in Ṛg. I. 65. 7, III. 43. 5 ('will you make me the protector of people, the king, O Indra'), IV. 4. 1, IX. 7. 5, X. 174. 4) and (2) 'noble' as in Ṛg. IX. 10. 3, X. 78. 1, X. 97. 6 ('where the plants come together as nobles in an assembly' *rājānaḥ samitāviva*). In Ṛg. VIII. 21. 18 it is said[87] 'Citra who gave thousands and ten thousands is the only king, others are only small chiefs along the bank of the Sarasvatī'. The word 'samrāj' is known to the Ṛgveda and is used as an epithet of Varuṇa (in Ṛg. VI. 68. 9) and of Indra (in Ṛg. VIII. 16. 1) and the word sāmrājya also occurs in relation to Varuṇa in Ṛg. I. 25. 10. In Ṛg. VIII. 37. 3 Indra is said to be sole ruler of the world (*ekarāṭ*). It is not unlikely therefore that the idea of an emperor who had suzerainty over several kings was known, though it is possible that in Ṛg. VIII. 37. 3 the word is used only in a metaphorical sense. In Ṛg. VII. 83. 7-8[87a] it is said that ten kings though they formed a confederacy could not vanquish king Sudās and that in the ten kings' battle (*dāśarājñe*) Indra and Varuṇa helped Sudās who was surrounded by them on all sides. A very large number of kings is mentioned by name in numerous places in the Ṛgveda (e. g. I. 53. 8 and 10, I. 54. 6, I. 100. 17, VII. 33. 2, VIII. 3. 12, VIII. 4. 2). Besides these it appears that there were

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86a. प्रजाभिस्तु बन्धुमन्तो राजानो न ज्ञातिभिः । हर्षचरित V.

87. चित्र इद्राजा राजका इदन्यके यके सरस्वतीमनु । पर्जन्य इव ततनद्धि वृष्ट्या सहस्रमयुता ददत् ॥ ऋ. VIII. 21. 18.

87a. दश राजानः समिता अयज्यवः सुदासमिन्द्रावरुणा न युयुधुः ।...दाशराज्ञे परियत्ताय विश्वतः सुदास इन्द्रावरुणावशिक्षतम् । ऋ. VII. 83. 7-8.

tribal chiefs or governments of such clans or tribes as the Anus, Druhyus, Turvaśas, Pūrus, Yadus (Ṛg. I. 108. 8, all in the plural, VII. 18. 6 and VIII. 6. 46). But sometimes these words are used in the singular, when they mean 'a king or chief of that clan'. Vide Ṛg. VIII. 4. 7, VIII. 10. 5, IV. 30. 17. In the Atharvaveda III. 4. 1 (may you shine forth as the sole ruler of men) that word (*ekarāṭ*) is used in its literal sense and in Atharva VI.98.1 (may[87b] Indra conquer and may he never be defeated, may he shine as the overlord among kings) the idea of an emperor (*adhirāja*) is clearly set forth. In Ṛg. X. 128. 9[88] the word 'adhirāja' must be taken in the same sense. The Atharvaveda speaks of an Ugra which word seems to mean a formidable king (or emperor) 'Then you chase away disease as a formidable (king) who is in the midst (of many kings presses hard each of them)' IV. 9. 4. In the Atharvaveda III. 4. 3 it is said 'May the *ugra* see a lot of tribute'. In Ṛg. X. 34. 8 the word *ugra* has probably the same sense viz. 'a formidable king'. In the Tai. S. II. 6. 2. 2 it is said that men are held (supported or restrained) by the king (tasmād rājñā manuṣyā vidhṛtāḥ). In the Tai. S. I. 8. 10. 2 occur[89] the words in the *ūvid* formula recited in the Rājasūya 'May the gods extract for men great power, great overlordship, great sovereignty over people; this, O Bharatas, is your king, while Soma is king of us brāhmaṇas'. The exact relation of the two words 'ādhipatya' and 'jānarājya' is not clear. Similar words occur in Vāj. S. IX. 40 and X. 18 and in Kāṭhaka XV. 5. In the Ait. Br. (39.1) it is said[90] that 'whoever desires the king to attain supremacy over all kings, to attain to the rank of emperor...and desires that he be the supreme ruler, the sole emperor (ekarāṭ) of the whole earth bounded by the sea up to its very extremities should be consecrated and crowned with the *Aindra Mahābhiṣeka* after making him take an oath.' In this passage the meanings of the words 'bhaujya', 'svārājya', 'vairājya' and 'pārameṣṭhya' in

87b. इन्द्रो जयाति न परा जयाता अधिराजो राजसु राजयातै। अथर्ववेद VI. 98. 1.

88. ये नः सपत्ना अप ते भवन्त्विन्द्राग्निभ्यामव बाधामहे तान्। वसवो रुद्रा आदित्या उपरिस्पृशं मोग्रं चेत्तारमधिराजमक्रन्॥ ऋ. X. 128. 9.

89. ये देवा देवसुवः स्थ त इममामुष्यायणमनमित्राय सुवध्वं महते क्षत्राय महत आधिपत्याय महते जानराज्यायैष वो भरता राजा सोमोऽस्माकं ब्राह्मणानां राजा। तै. सं. I. 8. 10. 2. Vide H. Dh. vol. II. p. 1217 and n. 2651.

90. स य इच्छेदेवंवित्क्षत्रियमयं ... सर्वाँल्लोकानभिजयेतायं सर्वेषां राज्ञां श्रैष्ठ्यमतिष्ठां परमतां गच्छेत साम्राज्यं भौज्यं स्वाराज्यं वैराज्यं पारमेष्ठ्यं राज्यं माहाराज्यमाधिपत्यमयं समन्तपर्यायी स्यात्सार्वभौमः सार्वायुष आन्तादापरार्धात् पृथिव्यै समुद्रपर्यन्ताया एकराळिति तमेतेनैन्द्रेण महाभिषेकेण क्षत्रियं शापयित्वाभिषिञ्चेत्। ऐ. ब्रा. 39. 1.

relation to sovereignty over people are not clear. They are probably hyperbolical and grandiloquent words to convey supreme power. Even a brāhmaṇa, according to vedic texts, may perform the Vājapeya if he desires 'svārājya' which means super-eminence. Parameṣṭhin means 'Prajāpati' and so pārameṣṭhya simply means godlike power. Further there is no apparent reason why, after rising high from sāṁrājya to 'pārameṣṭhya' there should be a descent to mere 'rājya' and 'māhārājya'. Sāyaṇa[91] takes 'rājya' and 'māhārājya' at the end of the passage as referring to the position of the king in the next world. This is rather far-fetched. Jayaswal (in 'Hindu Polity', part 1 pp. 89–90 and p. 133) takes these words to mean 'the Bhaujya constitution &c.' relying on the occurrence of the Bhojas in Aśoka's Rock Edicts V and XIII and in Khāravela's Inscription, on the appearance of Bhojas as rulers in Western India and the town of Bhuj in Cutch and 'vairājya' as kingless system and 'svārājya' as 'self-ruling system'; but this is all unwarranted and is a fair sample of the way in which some of Jayaswal's theories are built up. It passes one's understanding how a paramount sovereign is promised *vairājya* (in Jayaswal's sense) in the Ait. Br. In the Ṛgveda (V. 66. 6) we have the word 'svarājya' (which probably means the same thing as 'svārājya') in 'Let us strive for an all-embracing sovereignty, which will afford protection to many'[92]. In the Śatapatha Brāhmaṇa the distinction between a king (rājan) and an emperor is very clearly expressed as follows: 'For, by offering the Rājasūya he becomes king and by the Vājapeya he becomes emperor; and the office of king is the lower and that of emperor higher' (V. 1. 1. 13). Śatapatha IX. 3. 4. 8 contains the same idea again. In Śatapatha I. 6. 4. 21 it is said 'before the slaying of Vṛtra he was Indra, it is true; but after slaying Vṛtra he became Mahendra, even as a king (rājan) becomes a mahārāja after obtaining victory'. These passages are sufficient to establish that the idea of a suzerainty extending over many kingdoms was known in the times of the Ṛgveda and had been fully developed before the composition of the Aitareya and Śatapatha Brāhmaṇas.

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91. सायण (on ऐ. ब्रा. 37. 2. where also these words occur) explains 'साम्राज्यं धर्मेण पालनं भौज्यं भोगसमृद्धिः स्वाराज्यमपराधीनत्वं वैराज्यमितरेभ्यो भूपतिभ्यो वैशिष्ट्यम्। एतदुक्तमैहिकम्। अथामुष्मिकमुच्यते। पारमेष्ठ्यं प्रजापतिलोकप्राप्तिः। तत्र राज्यमैश्वर्यं माहाराज्यं तत्रत्येभ्य इतरेभ्य आधिक्यम्।'; वायुपुराण 45. 87 says 'अयं लोकस्तु वै सम्राडन्तरीक्षो विराट्स्मृतः। स्वराडन्यः स्मृतो लोकः पुनर्वक्ष्यामि विस्तरम्।'

92. आ यद्वामीयचक्षसा मित्र वयं च सूरयः। व्यचिष्ठे बहुपाय्ये यतेमहि स्वराज्ये॥ ऋ. V. 66. 6.

The Aitareya Brāhmaṇa mentions by name twelve emperors of ancient India and the Śatapatha thirteen (XIII. 5. 4. 1–19). Pāṇini explains (V. 1. 41–42) 'sārva-bhauma' as 'the lord of the whole earth'. The Amarakośa states that the words 'rāj', 'pārthiva', 'kṣmābhṛt', 'nṛpa', 'bhūpa' and 'mahīkṣit' are synonyms and mean 'king', that a king before whom all feudatories humble themselves is styled 'adhīśvara', 'cakravartin', 'sārvabhauma' i. e. these three last words are synonyms. The word 'cakravartin' is derived[93] by Kṣīrasvāmin as 'one who wields lordship over a circle of kings' or 'who makes the circle (i. e. kingdom) abide by his orders'. The word 'cakravartin', though not so ancient as 'sārvabhauma', has been employed from very ancient times. The Maitrī Upaniṣad 1. 4 mentions[94] 15 cakravartins. The Rājanītiprakāśa (p. 58) quotes[95] a passage from the Sāmavidhāna Brāhmaṇa (III. 5. 2) 'the priest should perform the coronation with the Ekavṛṣa Sāman for that king whom he desires to be the sole ruler and whose circle of territory (he does not desire) to be overwhelmed (by an enemy)'. Here probably is one of the earliest references to the derivation of the word cakravartin. In the Mahāvagga (Selasutta, S. B. E. vol. X p. 102) Lord Buddha is made to say 'I am a king, an incomparable, religious king (dharmarāja); with justice (dhammena) I turn the wheel, a wheel that is irresistible'. Here the idea of the secular cakravartin is carried into the moral and spiritual sphere. In the Nānāghāt Inscription (of about 200 B. C.) occurs the word 'apratihatacakasa' (i. e.—cakrasya). Vide A S W I, vol. V. p. 50 at p. 60. Khāravela is styled Kaliṅga-cakravartin in the Mañchapuri record of his chief queen (E. I. vol. XX p. 86n), 'supavatavijaya-caka' (supravṛttavijaya-cakra, in l. 14) and 'pavata-caka' (pravṛtta-cakra in l. 17) of his Hāthigumphā Inscription (E. I. vol. XX at pp. 88–89). Kauṭilya (IX. 1) defines the land of the cakravartin[96] as the territory on the earth spreading towards the

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93. नृपचक्रे राजके वर्तते स्वाम्येन चक्रं राष्ट्रं वर्तयति वा चक्रवर्ती । क्षीरस्वामी.

94. अथ किमेतैर्वा परेऽन्ये महाधनुर्धराश्चक्रवर्तिनः केचित्सुद्युम्नभूरिद्युम्नेन्द्रद्युम्न-कुवलयाश्वयौवनाश्ववध्र्यश्वाश्वपतिशशबिन्दुहरिश्चन्द्राम्बरीषननक्तु (नहुष ?) सर्यातिययात्यनरण्याक्षसेनादयः । मैत्री उप. I. 4.

95. यमेवं कामयेतैकराजः स्यान्नास्य चक्रं प्रतिहन्येतेत्येकवृषेणाभिषिञ्चेत् । सामविधानब्राह्मण III. 5. 2, q. in राजनीतिप्र. p. 58. सायण paraphrases चक्रं by मण्डलम्.

96. देशः पृथिवी तस्यां हिमवत्समुद्रान्तरमुदीचीनं योजनसहस्रपरिमाणमतिर्यक् चक्रवर्तिक्षेत्रम् । कौटिल्य IX. 1; कुमारीपुरात्प्रभृति बिन्दुसरोऽवधि योजनानां दशशती चक्रवर्तिक्षेत्रम् । तां विजयमानश्चक्रवर्ती भवति । काव्यमीमांसा p. 92. Vide Jayaswal's 'History of India' plate IV after p. 211 where there is a wheel with eight spokes on a pillar with an inscription (*vākāṭakānām*).

north from the sea to the Himālaya, which is a thousand *yojanas* in extent when measured in a straight line. The same idea occurs in the Kāvyamīmāṁsā of Rājaśekhara (p. 92). Kauṭilya also employs the expression 'cāturanto rājā' (a king of the earth up to its four boundaries). Śānti-parva[97] speaks of a ruler who brings the whole earth under one umbrella. On the birth of Harṣa, the chief astrologer told his father Prabhākaravardhana that the boy would be the leader of the seven cakravartins (Harṣacarita IV). In some works the six cakravartins are said to be Māndhātā, Dhundhumāra, Hariścandra, Purūravas, Bharata, Kārtavīrya. The Sabhāparva (15. 15–16) mentions five emperors of old viz. Yauvanāśva (Māndhātā), Bhagīratha, Kārtavīrya, Bharata and Marutta. Vide Dr. N. N. Law's 'Aspects of Ancient Indian Polity' pp. 17–21 for exhaustive lists of ancient emperors, from the Mahābhārata, the Śatapatha Brāhmaṇa and other works. This ideal of cakravartin was set before them by all ambitious and energetic Indian rulers from ancient times. The result was that constant wars took place. We have a galaxy of historical emperors that emulated such mythical heroes and emperors as Māndhātā and Bharata and practically realized the ideal. To name only a few, Candragupta, Aśoka, Puṣyamitra, Bhavanāga of the Bhāraśivas, Pravarasena Vākāṭaka, Samudragupta and Harṣa are great names in our ancient history. Even if this ideal of universal empire had not been there, wars could not have been avoided. That was a very usual thing everywhere in the ancient world. Only about 700 years ago, Britain, which is a very small country compared to India, had three kingdoms engaged in constant warfare.

The Matsya-purāṇa (114. 9–10) first gives the dimensions of Bharata-varṣa from South to North (from Cape Comorin to the source of the Ganges) as one thousand yojanas, states that its extent is ten thousand yojanas (when measured upwards across the boundaries) and that on all borders of it there are Mlecchas and that Yavanas and Kirātas dwell to its east and west (verse 11) and that the king who conquers the whole of Bharatavarṣa is styled 'saṁrāṭ' (verse 15). Vide Brahmapurāṇa 17. 8 ff for almost the same words. The Śukranītisāra (I. 183–187) states that a sāmanta is one whose yearly revenue is from 1 to 3 lakhs of silver karṣas without oppressing the people, the revenue of a māṇḍalika is from 4 to 10 lakhs, that of a rājan is from 11 to 20

97. य इमां पृथिवीं कृत्स्नामेकच्छत्रां प्रशास्ति ह । शान्तिपर्व.

lakhs, of a mahārāja from 21 to 50 lakhs, of a svarāṭ from 51 lakhs to a crore, of a virāṭ from two crores to ten, of the sārvabhauma (who wields suzerainty over the whole earth i. e. Bharatavarṣa) from 11 crores to 50. Though these definitions may be regarded as scholastic and too rigid to have been practically followed they do convey a sufficiently clear idea about the power of a feudatory, a king and an emperor. The Sabhāparva[98] (15. 2) says 'there are kings in each house, who do what pleases them; but they do not reach the position of emperor, which title can be acquired with great difficulty'; and 'that king under whose sole dominion the world abides secures the position of *samrāj*'. In these and other places 'world' means 'Bharatavarṣa' for which see H. Dh. vol. II pp. 17–18. Sovereignty (sāmrājya) consisted in ancient India not necessarily or invariably in acquiring control over vassal kings in all their affairs. Generally the supreme ruler did not hanker after territory so much as after having his superior prowess acknowledged. The descriptions of *digvijayas* (world conquests) in the Mahābhārata (e. g. of Pāṇḍu in Ādi 113, of Arjuna and the other Pāṇḍava brothers in Sabhā, chap. 26–32) show that there was no aggrandizement by acquiring fresh territory but all that was desired was to make the several kings submit and pay tribute or offer presents. Arjuna expressly says in Sabhā 25.3 that he would bring tribute from all kings and the conquered kings are generally represented as submitting and making presents of gems, golds, horses, cows to the conqueror. The Allahabad stone pillar[99] Inscription of Samudragupta (Gupta Ins. p. 8) states that the *pratyanta* (bordering) kings of Samataṭa and other countries and the Mālava and other tribal oligarchies fully gratified Samudragupta's commands by giving all tribute, by obeying his orders and by coming to perform obeisance. Śānti 96 insists that conquests should be made according to dharma. Empire did not mean imposition of the language or the government system of the conqueror on the conquered country. The conqueror's duty as understood by ancient Indian works was quite different

98. गृहे गृहे हि राजानः स्वस्य स्वस्य प्रियंकराः। न च साम्राज्यमाप्तास्ते सम्राट्शब्दो हि कृच्छ्रभाक्॥ सभा 15. 2; प्रभुर्यस्तु परो राजा यस्मिन्नेकवशे जगत्। स साम्राज्यं महाराज प्राप्तो भवति योगतः॥ सभा 14. 9–10.

99. समतट-डवाक-कामरूप ...... कर्तृपुरादिप्रत्यन्तनृपतिभिर्मालवार्जुनायनयौधेयमाद्रकाभीरप्रार्जुनसनकानीककाकखरपरिकादिभिश्च सर्वकरदानाज्ञाकरणप्रणामागमनपरितोषितप्रचण्डशासनस्य। Gupta Inscriptions p. 8.

as will be presently shown. Kauṭilya (XII. 1) declares[100] that there are three kinds of invaders, viz. *dharmavijayin* (who is satisfied with mere submission or obeisance), *lobhavijayin* (who is satisfied with gain in land and money), *asuravijayin* (who is not satisfied with land and money only but robs the defeated king of his son, wife and life). The Nītivākyāmṛta (pp. 362–363, Yuddhasamuddeśa) defines the three almost in the same words. This shows that in the first two kinds of conquests the conquered state retained its own institutions, organization and government intact. Bāṇa gives[101] in very striking language what Harṣa proclaimed when he started against the treacherous king of Gauḍa and on *digvijaya*. It appears that even the queens of vanquished chiefs had to perform the duties of maids at the time of the coronation of the emperor and empress, as queen Yaśomatī says to Harṣa (in Harṣacarita V). Vide Sabhā 31. 73–74 where Bibhīṣana is said to have come with presents to Sahadeva. Aśoka (in Kalsi Edict No. XIII in C. I. I. I, pp. 44 and 46, ed. by Hultzsch) speaks of his conquest being *dharmavijaya*. This means that he foreswore greed and cruelty and wanted that his influence be only acknowledged. The Pallava king Śivaskandavarman (of Kāñcī) who had performed the Agniṣṭoma, Vājapeya and Aśvamedha sacrifices calls himself *dhamma-mahārājādhirāja* (a dharma-vijayī emperor) in E. I. vol. I. p. 5. In the Dudia plate of Pravarasena II, Pṛthvīṣeṇa is styled dharma-vijayin (E. I. vol. III p. 258 at p. 261). Samudragupta's conquest of South India seems to have been only a dharmavijaya. As time went on the titles of kings grew in grandiloquence. Aśoka whose empire extended at least from Afganistan to the Bay of Bengal and included some part of the Deccan and Mysore calls himself '*rājā*'. Khāravela is styled only mahārāja and Kaliṅgādhipati in the Hāthigumphā Inscription.

100. त्रयोऽभियोक्तारो धर्मासुरलोभविजयिन इति । तेषामभ्यवपत्त्या धर्मविजयी तुष्यति । तमभ्यवपद्येत । परेषामपि भयाद् भूमिद्रव्यहरणेन लोभविजयी तुष्यति तमर्थेनाभ्यवपद्येत । भूमिद्रव्यपुत्रदारप्राणहरणेनासुरविजयी तं भूमिद्रव्याभ्यामुपगृह्याग्राह्यः प्रतिकुर्वीत । कौटिल्य XII. 1; स धर्मविजयो राजा विधेयमात्रेणैव सन्तुष्टः प्राणार्थाभिमानेषु न व्यभिचरति । स लोभविजयी राजा यो द्रव्येण कृतप्रीतिः प्राणाभिमानेषु न व्यभिचरति । सोऽसुरविजयी यः प्राणार्थमानोपघातेन महीमभिलषति । नीतिवा. pp. 362–363. Vide विष्णुधर्मोत्तर II. 145. 21 for धर्मविजयी king and अधर्मविजयी.

101. सर्वेषां राज्ञां सज्जीक्रियन्तां कराः करदानाय शस्त्रग्रहणाय वा गृह्यन्तां दिशश्चामराणि वा नमन्तु शिरांसि धनूंषि वा कर्णपूरीक्रियन्तामाज्ञा मौर्व्यो वा शेखरीभवन्तु पादरजांसि शिरस्त्राणि वा घटन्तामञ्जलयः करिघटाबन्धा वा मुच्यन्तां भूमय इषवो वा समालम्ब्यन्तां वेत्रयष्टयः कुन्तयष्टयो वा सुदृष्टः क्रियतामात्मा मच्चरणनखेषु कृपाणदर्पणेषु वा । हर्षचरित VI.

Huviṣka, the Kuṣaṇa emperor, is styled *Mahārāja-rājātirāja-devaputra* (E. I. vol. I. pp. 371, 386). Samudragupta is simply mahārāja (Gupta Inscriptions p. 8). But later emperors styled themselves paramabhaṭṭāraka-mahārājādhirāja (Gupta Inscriptions p. 70, Indore copperplate of Skandagupta of Gupta year 146 i. e. 465–66 A. D.) or sometimes 'parama-bhaṭṭāraka-mahārājādhirāja-parameśvara' (Gupta Inscriptions No. 39, p. 176 copperplate of the Valabhi king Śīlāditya in 447 of the Valabhi era i. e. 766–67 A. D.). Ancient works are not very particular about the epithets they employ when speaking of a king or an emperor. Śānti (68.54) says that a king is praised with the epithets rājan, bhoja, virāṭ, saṁrāṭ, kṣatriya, bhūpati and nṛpa.[102] Daśaratha is styled rājā in Ayodhyā 2.2. and mahārāja in 18.15 and 57.32. The Rājanītiratnākara (pp. 3–4) holds that kings are of three kinds; viz. emperor (saṁrāṭ), one who pays tribute and one who does not pay even tribute (but is not a saṁrāṭ), quotes several verses from a work of Nārada on politics and states that the words cakravartin, saṁrāṭ, adhīśvara and mahārāja are synonyms. Kings aspiring to be called saṁrāṭ performed the Rājasūya and Aśvamedha in ancient India. The Sabhāparva 13.30 speaks of Rājasūya as fit to be performed by a saṁrāṭ. Senāpati Puṣyamitra (about 180 B. C.) is said to have performed two Aśvamedhas (vide E. I. vol. XX p. 54, 57). The Ghosundi Inscription (E. I. vol. 16 p. 25 and E. I. vol. 22 p. 198) speaks of Sarvatāta, a great devotee of Viṣṇu, as a performer of Aśvamedha. Khāravela (who was a Jain) performed Rājasūya (E. I. vol. XX at p. 79). The Vākāṭaka king Pravarasena I had performed four Aśvamedhas (E. I. vol. III. p. 258 and Gupta Inscriptions No. 55). In the Vākāṭaka copperplates the Bhāraśivas are extolled as having performed ten Aśvamedhas (E. I. III. 258 at p. 260). The Sālaṅkāyana king Vijayadevavarma, whose capital was at Vengi in Āndhra, is said to have performed an Aśvamedha (E. I. IX p. 56, about 350 A. D). The Cālukya king Pulakeśin I had performed Aśvamedha (E. I. vol. VI p. 1 and IX. p. 100) about 550 A. D. Puṣyamitra is styled simply Senāpati in the Mālavikāgnimitra Act V when he sends a message to his son about attending the Rājasūya in which he had been engaged. For the significance of the Abhiṣecanīya rite in Rājasūya vide H. of Dh. vol. II pp. 1216–1218. The Kadambas are said to have performed Aśvamedhas in the Nilambur plates (E. I. vol. VIII p. 148). The Viṣṇukuṇḍin

102. राजा भोजो विराड् सम्राड् क्षत्रियो भूपतिर्नृपः । य एभिः स्तूयते शब्दैः कस्तं नार्चितुमर्हति ॥ शान्ति 68. 54.

Mahārāja Mādhavavarman performed eleven Aśvamedhas and one thousand Agniṣṭomas (I. H. Q. vol. IX p. 278). Vide H. Dh. vol. II pages 1238–1239 for a few more historic examples of the performers of Aśvamedha.

Kauṭilya (VII. 16) prescribes that the conqueror should not covet the territory, wealth, sons and wives of the slain (in battle), that he should re-instate the late king's kinsmen in their proper places (or positions), that he should instal the son of the deceased king on the throne of his father and adds that the emperor who kills or imprisons the kings that submit and covets their lands, wealth, sons or wives provokes the *maṇḍala* (the circle of States) and makes it rise against himself. Yājñavalkya (I. 342–43) prescribes that it is the duty of the conqueror to protect the conquered country in the same way as his own country and the conqueror is to respect the customs of the conquered country, its laws and the usages of the families therein.

The Viṣṇudharmasūtra[103] (III. 42 and 47–49) enjoins upon the conqueror not to uproot the usages of the conquered country, to establish in its capital some kinsman (of the slain king) and not to destroy the royal family unless it be of low birth. Manu (VII. 202–203) and Agnipurāṇa 236·22 prescribe similar rules. The Rāmāyaṇa (VII. 62·18–19) requires the conqueror, after uprooting the king, to establish another king there in order to ensure stable government. Vide Śānti 33·43–46 quoted above on p. 40. Kātyāyana (q. in the Rājanītiprakāśa p. 411) prescribes that even when the (vanquished) king is at fault, the conqueror should not ruin the country (for the fault of the vanquished king), since he (the vanquished king) did not start (on his career of) wrong-doing with the consent of his subjects. The Rājanītiprakāśa draws from this the conclusion that the ministers with whose consent the war was started may be harassed by the conqueror. This advice was generally followed by ancient conquerors and emperors. Rudradāman (150 A. D.) is styled the establisher of kings that had lost their territories (in the Junāgadh Ins., E. I. vol. VIII at p. 44) and in the Allahabad Stone Pillar Inscription of Samudragupta it is said that his fame travelled over the whole world because of his

103. परदेशावाप्तौ तद्देशधर्मान्नोच्छिन्द्यात् । ... राजा परपुरावाप्तौ तु तत्र तत्कुलीनमभिषिञ्चेत् । न राजकुलमुच्छिन्द्यात् । अन्यत्राकुलीनराजकुलात् । विष्णुधर्मसूत्र. III. 42, 47–49; दुष्टस्यापि नरेन्द्रस्य तद्राष्ट्रं न विनाशयेत् । न प्रजानुमतो यस्मादन्यायेषु प्रवर्तते ॥ कात्यायन quoted by राजनीतिप्र p. 411, which adds येषाममात्यादीनामनुमत्याऽन्याये प्रवृत्तिस्तान् पीडयेद्वेति ध्येयम्.

having re-established several royal families that had lost their kingdoms (Gupta Inscriptions, p. 8). The Śukranītisāra (IV. 7·397–399) requires the conqueror to support the well-behaved son and the queen of the vanquished king or to give a fourth of the conquered kingdom to him and only $\frac{1}{32}$ part of it to one who is not endowed with good qualities and the conqueror may appropriate the whole treasury of the conquered.

The coronation of a king was a very solemn and important ceremony. Reasons of space forbid any lengthy treatment but something must be said about it. In the medieval text-books, various procedures are described from different sources. The Rājanītiprakāśa (pp. 42–112), the Nīti-mayūkha (pp. 1–13) and the Rājadharmakaustubha (pp. 237–374), the Rāja. Dh. K. (II. pp. 6–10) quote procedures of coronation from the Ait. Br., the Gopatha Br., the Sāmavidhana Br., the Brahmapurāṇa, the Viṣṇudharmottara and other works. The procedure from the Purāṇas probably originated when persons of the śūdra caste frequently became kings. The Rājanītiprakāśa[104] (p. 112) says that there being different procedures of coronation rites based on Vedic texts, some hold, following the dictum of Śabara (on Jaimini II. 4·9), that the coronation rite should comprehend all the different items mentioned in the several vedic texts (provided they do not contradict each other), while others hold that there should be no comprehensive inclusion of all items but each vedic or smṛti procedure should be followed separately by itself. Mitramiśra concludes that the purohita should follow that course which is nearest to his own śākhā. The Rājadharmakaustubha (p. 339) says that as the rite described in the Viṣṇudharmottara contains the largest number of details, one who is able to do so, may follow that Purāṇa, while for those who cannot do so there is an option or students of the Ṛgveda may follow the Ṛgvidhāna mode, of the Sāmaveda the Sāmavidhāna Br. and all may follow the Purāṇa mode of coronation. I shall first briefly indicate what procedure was followed in some vedic texts such as the Gopatha Brāhmaṇa, the Sāmavidhāna Br. and in the Gṛhyasūtras, then point out what was done in the times of the

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104. पूर्वोक्तानां श्रौतानामभिषेकाणामविरुद्धानामेकत्रोपसंहारेणैकोऽभिषेकः कार्यः सर्वशाखाप्रत्ययमेकं कर्मेति न्यायादित्येके । अन्ये तु श्रौतानां स्मार्तानां च तत्तच्छ्रुतिस्मृतिपठितानामनुपसंहारेणैकप्रयोगमिच्छन्ति । तदेवं यस्य पुरोहितस्य स्वशाखाविहितत्वेन यः पक्षः संनिहितस्तेनैव तेनाभिषेकः कार्यः । राजनीतिप्रकाश p. 112. On एकं वा संयोगरूपचोदनाख्याविशेषात्, (Jai. II. 4. 9) Śabara remarks न चैतदस्ति यदुक्तं शाखान्तरेषु कर्मभेद इति । सर्वशाखाप्रत्ययं सर्वब्राह्मणप्रत्ययं चैकं कर्म । अर्थसंयोगस्याविशेषात्.

epics and set out the prominent items in the procedure of the purāṇas.

The Aitareya Brāhmaṇa (38) describes the Great Coronation of Indra (*Aindra mahābhiṣeka*) and in that connection mentions how the kings of the Sātvatas in the south were called ' Bhoja ' after coronation, the kings of the eastern countries were called ' saṁrāṭ ', the kings in the west were called ' svarāṭ ' and the kings of the north i. e. of countries beyond the Himālaya (viz. Uttarakurus and Uttaramadras) were called ' virāṭ '. Then (in 39) it states that the kṣatriya king is to be made to take an oath and is to be crowned in the manner of the Aindra Mahābhiṣeka[105]. The oath which the kṣatriya is to take before the priest with faith is : ' the merit of sacrifices and good works that belongs to me from the night I was born up to the night on which I shall die, my worlds, good deeds, life, progeny,—these you may destroy if I hate (or prove false to) thee'. Vide note 41 above for the coronation oath in Śānti 59. 106 ff. It will be noticed that this passage of the Ait. Br. contains no undertaking given by the king to the people to rule according to dharma or for their welfare. So this passage cannot strictly be interpreted as postulating a contractual basis for the authority or power of the king, as done by Jayaswal (' in Hindu Polity ' part II. p. 28). The Ait. Br. sets out the materials (*sambhāras*) for the coronation of a king (in chap. 39·2) viz. fruits of nyagrodha, udumbara, aśvattha and plakṣa trees, grains of small rice, large-sized rice, priyaṅgu and barley, a couch of udumbara with span-long feet, a spoon with a four-cornered scooped basin of udumbara and an udumbara vessel, on one of which two the other materials were to be placed and curds, honey, clarified butter and rain water gathered when the sun is shining. The mantras to be recited are mentioned in 39·3–4 and the fee in 39·6. In the Rājasūya (to be performed only by a kṣatriya) described in the Brāhmaṇas and sūtras, the principal rite is the Abhiṣecanīya in which the king is bathed with waters brought from seventeen sources in seventeen vessels of udumbara wood. Vide H. Dh. vol. II. pp. 1216–1218 for the rite. The Rājanītiprakāśa (p. 92–107) explains the procedure of coronation from the Ait. Br. In the Rājasūya, among the preliminary rites are the offerings

105. एतेनैन्द्रेण महाभिषेकेण क्षत्रियं शापयित्वा अभिषिञ्चेत्... स ब्रूयात्सह श्रद्धया। यां च रात्रिमजायेहं यां च प्रेतास्मि तदुभयमन्तरेणेष्टापूर्तं मे लोकं सुकृतमायुः प्रजां वृञ्जीथा यदि ते द्रुह्येयमिति । ऐ. ब्रा. 39. 1.

called 'ratninām havīṁṣi' (the offerings in the houses of the jewels, which are twelve). Vide H. Dh. vol. II pp. 1215–16. They have a symbolical value. The person to be crowned recognizes the importance of his high functionaries and is declared to be their king and they are supposed to approve of him as king. In the Abhiṣecanīya rite of the Rājasūya, there are two parts, a religious and a popular. First, the adhvaryu and the other priests sprinkle the king with holy water collected from various sources in vessels; then the king's brother, a friendly kṣatriya and a vaiśya also sprinkle him with the holy water. This last is symbolic of the popular approval of the coronation.

The Tai. Br. II. 7. 15–17 deals with coronation. It first gives the seven mantras for seven *āhutis* that are offered. A tiger skin is spread on which the king is seated and he is sprinkled with holy water in which sprouts of barley and dūrvā grass are mixed up; the king ascends a chariot to the accompaniment of mantras, then the four wheels of the chariot are touched, the purohita and charioteer are addressed with mantras; Anumati, the Earth (as mother), and Heaven (as father) are implored to approve of the coronation, the king is made to look up towards the Sun and then the king looks on the subjects; the king then undergoes shaving when seated on a chair of udumbara wood, then his arms and head are anointed with milk blended with clarified butter.

The Nītimayūkha pp. 4–5, Rājanītiprakāśa pp. 42–43, Rājadharmakaustubha pp. 335–336 quote a passage from the Gopatha Brāhmaṇa[106] on the rites of coronation as follows:— We shall expound the rite of the coronation of the king. Having

106. आथर्वणगोपथब्राह्मणे—अथ राज्ञोभिषेकविधिं व्याख्यास्यामः । बिल्वप्रभृतीन्सम्भारान् संभृत्य षोडशकलशान् षोडश बिल्वानि वल्मीकस्य च मृत्तिकां सर्वौषं सर्वरसान् सर्वबीजानि । तत्र चत्वारः सौवर्णाश्चत्वारो राजताश्चत्वारस्ताम्राश्चत्वारो मृन्मयाः कुम्भाः । तान् ह्रदे सरसि वोर्ध्वस्रुतो नामैनाम इत्युदकेन पूरयित्वा वेदिपृष्ठे संस्थाप्य कुम्भेषु बिल्वमेकैकं दद्यात् । सर्वौषं सर्वरसान् सर्वबीजानि च प्रक्षिप्याभयैरपराजितैरायुष्यैः स्वस्त्ययनैः सौवर्णेषु संपातान्, संस्राव्यैः संसिक्तीयैश्चैव राजतेषु, भैषज्यैरंहोमुच्यैस्ताम्रेषु, संवेशसंवर्गाभ्यां शन्तातीयैः प्राणसूक्तेन च मृन्मयेषु । ततस्तान् कलशान् गृहीत्वा श्रोत्रियैः पवित्रतमै राजानमभिषिञ्चेत् । भूमिमिन्द्रं च वर्धयित्वा क्षात्रियं म इति (इममिन्द्र वर्धय क्षात्रियं म इति ?) सिंहासनमारूढमभिमन्त्रयेत् । एवमभिषिक्तस्तु रसान्प्राश्नीयाद् विप्रेभ्यश्च दद्याद्गोसहस्रं सद्स्येभ्यः कर्त्रे ग्रामवरम् । विपुलं यशः प्राप्नोति भुङ्क्ते धरां जितशत्रुः सदा भवेदिति । राजनीतिप्र. pp. 42–43, राजध. कौ. pp. 335–336, नीतिमयूख pp. 4–5. There are a few variants due to the scribes and the editors not being able to read the Mss properly. The कौशिकसूत्र 17. 28 reads 'इममिन्द्र वर्धय क्षात्रियं मे which is अथर्ववेद IV. 22. 1.

collected the materials required such as bilva fruit, viz. sixteen jars, sixteen bilva fruits, earth from an ant-hill, all kinds of husked grains, all liquids, and all kinds of grains (unhusked). There should be four jars each of gold, silver, copper and clay. Having filled them, keeping their mouths up, with water from a deep reservoir of water or a lake to the accompaniment of the mantra 'nāmaināma' (?) and having put the jars down on the surface of the altar, he (the priest) should place one bilva fruit apiece in each of the 16 jars and cast (into the jars) the husked and unhusked grains and all fluids, adding them (to the water) in the golden jars with the mantras called Abhaya (Atharvaveda 19.15), Aparājita, Āyuṣya (Atharvaveda I. 30) and Svastyayana [107] (Atharvaveda I. 21, VII. 85. 1, VII. 86. 1, VII. 117. 1), in the silver jars, with the mantras called saṁsrāvya (Atharvaveda 19.1) and Saṁsiktīya (Atharvaveda II. 26), in the copper jars with the mantras called Bhaiṣajya (Atharva VII. 45 'janād') and Aṁhomuc and in the earthen jars with Saṁveśa, Saṁvargya and Śantātīya mantras and with the Prāṇa hymn (Atharvaveda XI. 4). He should then bathe the king with (the water of) the jars held by very holy and learned brāhmaṇas (śrotriyas). He should consecrate the king seated on the throne with the mantra (Atharvaveda IV. 22. 1) 'O Indra, make this my kṣatriya prosper'. (The king) being thus bathed should eat the several liquids, should make gifts of a thousand cows to the brāhmaṇa priests who assist the chief priest, bestow a good village on the chief priest. He (the king) thereby acquires great glory, enjoys the earth and always vanquishes his foes'.

107. For Svastyayana vide H. Dh. II. p. 83 (n). For Āyuṣya vide Kauśikasūtra 52. 18; for Abhaya, Kauśika 16. 8; for Aparājita hymns Kauśikasūtra 14. 7 note; for Svastyayana, Kauśika 8. 2 n; the Śantātīya are Atharvaveda I. 6. 1, I. 33. 1, VII. 68, VII. 69. 1 &c. The Aṁhomuc verses are Atharva IV. 23 29. Vide Nītimayūkha p.25 for Aparājita mantras. The राजधर्मकाण्ड (p. 7) quotes from the ब्रह्मपुराण a long passage in which the mantras to be recited by the purohita are stated to be these 'त्रयोदश महामन्त्रान् तर्पयेज्जातवेदसि । गणं चैवाप्रतिरथं सत्यधर्मगणौ तथा । आयुष्यमभयं चैव तथा स्वस्त्ययनं परम् । वैष्णवानथ मन्त्रांश्च तथा पौरन्दरानपि । सावित्रब्राह्मरौद्रांश्च वारुणानथ सर्वदा' ॥ and explains ऋताषाडिति त्रयोदश मन्त्राः । गणाः इंद्रगन्यामूहेत्यादयः । अप्रतिरथः आशुः शिशान इति । सत्यगणः आगात्सत्यमिति । धर्मगणः यास्ते अग्ने घोरास्तनुवः इति । अभयस्वस्त्ययने यत इन्द्र स्वस्तिदा इति । ऋताषाड् is the first word of वाज. सं. 18, 38, अप्रतिरथ is ऋ. X. 103, आगात् सत्यम् is तै. ब्रा. III. 12. 3. 2 and यास्ते अग्ने घोरास्तनुवः is तै. ब्रा. I. 1. 7. 3, यत इन्द्र is ऋ. VIII. 61. 13 and स्वस्तिदा is ऋ. X. 152. 2.

The Sāmavidhāna Brāhmaṇa[108] (III. 5) describes a shorter rite: "(The priest) should crown the king when the moon is in the Puṣya or Śravaṇa constellation. Having brought waters (separately in separate jars) from famous holy rivers (like the Ganges)[109] and from the sea and having mixed in them rice, barley, sesame and māṣa (black beans) grains and curds, honey, flowers and gold, he should bathe the king seated on an auspicious throne made of udumbara wood on which is spread tiger-skin with the hair outside, from horn-pipes cut off from the horns of living cows to the accompaniment of the *rahasya* mantra 'abhrātṛvyaḥ' (you are without an enemy &c., Ṛg. VIII. 21.13, Sāmaveda 399 and 1489). He should bathe the king to the accompaniment of the Ekavṛṣa hymn (instead of Ṛg. VIII. 21.13) whom he desires to be the sole ruler (of the earth) and whose circle of kings is desired by him not to be overwhelmed by an enemy. On the priest performing the coronation rite the king should bestow the best village, a hundred maid servants and a thousand cows and (the king) should be obedient to him (the officiating priest)".

The Baud. Gṛhyaśeṣasūtra (I. 23) contains the procedure of coronation, the whole of which is quoted by the Bālambhaṭṭī on the Mitākṣarā on Yāj. I. 309. It is briefly as follows:—On the 5th or 13th *tithi* of the bright half when the moon is in Puṣya or Śravana or in any other auspicious constellation (*nakṣatra*), two brāhmaṇas are fed (the day previous). Then a worthy *purohita* is chosen, who mutters certain texts. At sunset the purohita makes a lotus-like circle in which are collected the materials viz. waters of the ocean and of rivers mixed with rice, barley, sesame, māṣas and *pañcagavya*, and a *bhadrāsana* made of udumbara, a tiger-skin, and golden jars and horns of cows. In the north-east part of the palace, a *homa* is performed with eight thousand *āhutis* (oblations) of rice &c. to the accompaniment of the *vyāhṛtis*, the *Gāyatrī* and the *mantra* to Tryambaka

108. सामविधानब्राह्मणेपि—राजानमभिषेचयेत् तिष्येण श्रवणेन वा । व्रीहियवैस्तिलमाषैर्दधिमधुसुमनोजातरूपैर्यशस्विनीभ्यो नदीभ्यः समुद्राच्चोदकान्याहृत्यौदुम्बरे भद्रासने वैयाघ्रे चर्मण्युत्तरलोम्न्यासीनं जीवन्तीनां गवां शृङ्गकोशैरभिषिञ्चेदभ्रातृव्य इति रहस्येन। यं कामयेतैकराजः स्यादिति नास्य चक्रं प्रतिहन्येतेत्येकवृषेणाभिषिञ्चेत् । अभिषेकत्रे दद्याद्ग्रामवरं दासीशतं सहस्रं तदधीनश्च भवेत् । इति । सामविधानब्रा. III. 5. 1-3 quoted by राजनीतिप्र. p. 58 and राजध. कौ. p. 338; both quote the gloss of Mādhavācārya on this.

109. The भारशिवs who became allied to the वाकाटकs by marriage are described as भागीरथ्यमलजलमूर्धाभिषिक्तानां दशाश्वमेधावभृथस्नातानां भारशिवानां E. I. vol. III. p. 258.

(Tai. S. I. 8. 6. 2). The priest first propitiates the goddess Lakṣmī with the hymn[110] to Śrī and then washes the crown with cow's urine and dung, milk, curds, clarified butter and with water mixed with *kuśas* to the accompaniment of appropriate mantras, and ties an amulet (*pratisara*), and sprinkles the king and his conveyance (horse). At sunrise next day (the day of coronation) the tiger-skin is spread on the throne, the king sits thereon facing the east, the priest takes the golden jars and sprinkles the king with water falling upon him from the cone-like horns of cows with several mantras (such as those addressed to waters, Varuṇa &c.). After the king is made to take a bath, a fee of a thousand *niṣkas* and a hundred *dāsīs* is paid to the brāhmaṇas. Then the crown is placed on his head and drums are beaten.

The Kauśikasūtra of the Atharvaveda (in 17.1-10) describes the abhiṣeka (called *laghu*) performed on the Yuvarāja, Māṇḍalika, Sāmanta and Senāpati and (in 17.11-34) describes the mahābhiṣeka of the king.

In the Rāmāyaṇa there are numerous references to coronation. In the Yuddhakāṇḍa 131 we have a lengthy description of the coronation of Rāma. Some of the salient features are: Rāma was shaved that day, had a bath and put on costly clothes. Sītā also was suitably dressed and ornamented. Rāma sat in a chariot and went through the capital, when Bharata held the reins, Śatrughna held the umbrella, Lakṣmaṇa the white *chowrie*; then Rāma rode an elephant; drums were beaten and conches were blown; as auspicious signs gold, cows, maidens, brāhmaṇas, men with sweetmeats in their hands passed in front of Rāma; the citizens had raised banners on every house; Jāmbavān, Hanumān and two others brought four jars full of sea-water and waters of five hundred rivers were brought

110. The Viṣṇudharmottara (II. 128. 2-6) states that the hymn to Śrī is different for each veda; the hymn of 15 verses beginning with 'Hiraṇyavarṇām hariṇīm' occurring in the pariśiṣṭa to the Ṛgveda is the one for Ṛgveda, the hymn of four verses beginning with 'rathe akṣeṣu vṛṣabhasya vāje' (Tai. Br. II. 7. 7) is the Śrīsūkta for the Yajurveda, the verse 'śrāyanta iva' (267, 1319) for Sāmaveda and 'śriyam dhātur mayi dehi' is the one for Atharvaveda. The Agnipurāṇa (237. 2-17) contains a hymn to Śrī, which is not vedic but paurāṇic. Similarly the Rājadharmakaustubha (pp. 367-370) contains a long paurāṇic hymn (said to have been repeated by Indra) to Śrī which is to be recited while the king was to be seated on the throne after coronation. It is taken from the Viṣṇupurāṇa I. 9.

in jars; the aged Vasiṣṭha, the family priest, seated Rāma and Sitā on a jewelled throne; Vasiṣṭha and other sages sprinkled Rāma with the holy and scented waters, then maidens, the ministers, soldiers, the guilds of merchants also sprinkled Rāma; Vasiṣṭha placed an ancient crown on Rāma's head; there was dancing and singing; Rāma gave presents to the priests and to his friends and to such helpers as Sugrīva, Aṅgada, Bibhīṣaṇa and others and Sitā gave a necklace to Hanumān. In the Ayodhyākāṇḍa 15 we have a description of preparations for the abhiṣeka of Rāma as yuvarāja. The Raghuvaṁśa XVII. 10 mentions the coronation of Kuśa's son with waters of holy rivers (tīrthas) from golden jars.

In the Mahābhārata also there are several references to and descriptions of coronation. Vide Sabhā 33 (where people of all castes including śūdras were invited at the Rājasūya, vv 41–42) for the coronation of Yudhiṣṭhira; Śānti 40 (in verses 9–13 the materials for coronation are described); Ādi 44, 85, 101 (only references).

The sambhāras (materials required) of coronation are stated in the Pratimānāṭaka (I. 1) ascribed to Bhāsa and in the Pañcatantra III (after verse 75).

In the Agnipurāṇa, chap. 218 deals with coronation and chap. 219 sets out the mantras. The following are the principal items in the ceremony; bath (with water in which sesame and mustard are mixed), seating on bhadrāsana, proclamation of *abhaya* (security and non-injury to all), releasing some prisoners from jail, Aindrī Śānti, fast by king, recital of mantras, sanctifying the head and other limbs of the king with earth taken from the top of a mountain and from other places, sprinkling *pañcagavya*, sprinkling of water from four jars of gold, silver, copper and earth by amātyas of the four varṇas, *abhiṣeka* by a Ṛgvedin with water mixed with honey, by Chandoga with water mixed with kuśa grass, by Yajurvedin and Atharvavedin brāhmaṇas touching king's head and throat with yellow pigment, singing and beating of musical instruments, holding of chowrie and fan before the king, king's looking into a mirror and clarified butter, worship of Viṣṇu and other gods, sitting on a tiger-skin below which there are four skins viz. of lion, *cheeta*, cat and bull; purohita to give madhuparka, to tie paṭṭa (a fillet or tiara) round the king's head and to place the crown on his head; presentation of ministers by the *pratihāra*;

king to give presents to the priests and other brāhmaṇas; going round fire; doing obeisance to elders; touching a bull; worshipping a cow with calf; riding a horse; honouring an elephant and riding it; procession in the capital; honouring all people and taking leave of them.

There are descriptions of the abhiṣeka of a yuvarāja (as of Bhīma in Śānti 41), of a great commander (as of Bhīṣma in Udyogaparva 155.26–32), of Droṇa in Droṇaparva 5.39–43, of Skanda in Śalyaparva 45.

The Rājanītiprakāśa (pp. 49–83), the Rājadharma-kaustubha (pp. 318–363) and Nītimayūkha pp. 1–4 quote from the Viṣṇudharmottara almost the whole of chapters 21–22 of the 2nd khaṇḍa that deal with the rites and mantras of coronation. It appears that the Kaustubha appropriates all the glosses of Mitramiśra. The Viṣṇudharmottara (II. 19) sets out first the Śānti (propitiatory) rite in honour of Indra (called the Paurandarī or Aindrī Śānti). It is impossible to give the details here, but a few matters may be noticed. The purāṇa (in II. 21) includes all the details from the Vedic texts (such as Svastyayana, Āyuṣya, Abhaya and Aparājita hymns) and adds other rites also. It mentions the procedure stated above from the Agnipurāṇa and employs Vedic mantras in doing so. In II. 22 the Viṣṇudharmottara gives purāṇa mantras in 182 verses, in which such gods as Brahmā, Nakṣatras (from Kṛttikā to Bharaṇī), the planets, 14 Manus, 11 Rudras, Viśve-Devas, Gandharvas and Apsarases, dānavas, dākinīs, birds like Garuḍa, nāgas, sages like Veda-Vyāsa, emperors like Pṛthu, Dilīpa, Bharata, vedas and vidyās, rivers &c. are invoked to crown the king.

The Rājadharmakaustubha gives the most elaborate description of coronation. First a śānti rite is performed, then on the next (2nd) day, a sacrifice to Īśāna (Rudra); on the 3rd day worship of the planets and other deities like waters, the earth, Nārāyaṇa, Indra &c. and the invocation of nakṣatras; on the 4th day a *yāga* for nakṣatras; on the 5th day at night a sacrifice to the goddess Nirṛti (a clay idol seated on an ass with dark vesture); on the sixth day Aindrī Śānti (propitiatory rite in honour of Indra); then the rites prescribed in the Viṣṇudharmottara purāṇa.

The Viṣṇudharmottara notes (II. 18. 2–4) that on the death of the reigning king, there is no waiting for an auspicious time.

The successor should be bathed with water in which sesame and mustard are mixed, proclamation should be issued in his name that he has succeeded as king, the purohita and astrologer should show him to the people while he occupies a seat other than that occupied by the late king ; the king should honour the people, proclaim peace and security, set free some prisoners and wait for the formal coronation. The Rājanītiprakāśa (p. 62) adds that on the death of a king his successor should be crowned one year thereafter and that when a king abdicates his successor may be crowned on any auspicious day without waiting for a year. From the fact that the Kaliṅga king Khāravela was crowned in his 25th year and the fact that the Bārhaspatya-sūtra[111] (I. 89–90) states that up to the 25th year the prince may spend his time in play and education and then in earning wealth, Jayaswal (in 'Hindu Polity' part II. p. 52) concludes that a Hindu coronation could not take place before the 25th year. This is proving too much. The Bārhaspatya-sūtra says not a word about the *age of coronation*. Authorities like the Viṣṇu-dharmottara require waiting for a year only after the death of the former king.

The Viṣṇudharmottara[112] (II. 7) specifies at great length the qualities of the principal queen (*agra-mahiṣī*), which are quoted by the Rājanītikaustubha pp. 249–250. The chief queen should have the coronation rite performed along with the king or she should be separately crowned after the king. Manu VII. 77 advises the king to marry a lady of noble family, of the same caste, of charming appearance and possessed of good qualities. The Rājataraṅgiṇī (VIII. 82) notes that Jayamati, the queen of the good king Uccala of Kashmir (1101–1111 A. D.), always occupied half his throne.

The Nītimayūkha and Rājadharmakaustubha give the most detailed description of the Aindrī Śānti. For want of space it has to be passed over. The Rājanītiprakāśa (pp. 63–66) and Rājadharmakaustubha (pp. 340–346) contain in one place a summary of the whole ceremony after Aindrī Śānti commencing one day previous to the actual day of coronation. One detail of the

111. पञ्चविंशतिवर्षं यावत् क्रीडाविद्यां व्यसनात् कुर्यात् । अत उत्तरमर्थार्जनम् । बार्हस्पत्यसूत्र I. 89–90.

112. एवं गुणगणोपेता नरेन्द्रेण सहानघ । अभिषेच्या भवेद्राज्ये राज्यस्थेन नृपेण वा ॥ विष्णुधर्मोत्तर II. 7. 8 on which रा. ध. कौ. p. 249 remarks राज्ञा सहाग्रमहिषी अभिषेक्तव्या अथवा अभिषिक्तेन राज्ञा पश्चात्स्वयमभिषेक्तव्या इत्युक्तम् ।

rites is interesting, viz. after the learned brāhmaṇas and priests sprinkle the king with holy waters from several jars to the accompaniment of mantras and a Ṛgvedin brāhmaṇa touches the king's head and throat with powder of *gorocanā* with the mantra 'gandhadvārām' (Tai. A. X. 1.10), principal virtuous ladies, whose sons are alive, of the four varṇas and also of mixed castes reciting auspicious songs (except the śūdra ladies who remain silent) should sprinkle the king with the waters derived from the sea and other holy places.[113] There is a graphic description of the coronation of Shivaji[113a] the founder of the Maratha Empire in 1674 A. D. in the chronicle (*bakhar*) compiled by Krishnaji Anant Sabhasad (ed. by K. N. Sane, pp. 98–104), where it is said that a costly throne was prepared, from 108 places waters were brought in 108 golden jars (95 *tīrthas* are actually named), Gāgābhaṭṭa and other brāhmaṇas officiated and sprinkled waters on the king, large gifts including the sixteen mahādānas were made. Eight ministers stood round the throne (whose names and offices are set out), the head of the ecclesiastical department called Panditrao being to the right and the prime minister (mukhya pradhāna) to the left, an umbrella (chatra) set with jewels was held over his head, new golden coins were struck and a new era was started called 'Rājyābhiṣeka' era commencing from that year. In a small work called 'Shivarāja-rājyābhiṣeka-kalpataru' (published in the quarterly Journal of the Bhārata-itihāsa-saṁśodhaka Maṇḍala at Poona, vol. X part I pp. 28–40) in 236 verses it is stated that a Yogin named Niścalapurī, an adept in Tāntrika rites, got a second coronation of Shivaji performed over three months after that performed by Gāgābhaṭṭa, with Tāntrika mantras on Wednesday the 5th of the bright half of Āśvina śake 1596, one interesting fact stated being that Shivaji went through a form of marriage with vaidika mantras with his wives that had already been married to him with paurānic mantras.

113. ततो मुख्या ब्राह्मणक्षत्रियवैश्यशूद्राः पतिव्रताः पुत्रवत्यो नार्यो मूर्धावसिक्तायाश्च यथासम्भवं समुद्रादिनानातीर्थाहृतैर्जलैरभिषिञ्चेयुः। शूद्राद्यास्तूष्णीम् । राजनीतिप्रकाश p. 66. Vide also राजधर्मकौस्तुभ p. 346 and नीतिमयूख p. 12 for similar words.

113a. For a detailed and graphic description of the coronation of King Shivaji in 1674 A. D. vide 'Shiva-chatrapatimahārāja-caritra' by Malhar Ramrao Chitnis (ed. in 1882) pp. 120–125 (in Marathi). Shivaji's upanayana was performed on the 5th of the bright half of Jyeṣṭha ; for seven days various rites went on ; Vināyakaśānti, Grahaśānti, Aindrī and Pauranadarī are said to have been performed and he was actually crowned on the 13th of the bright half of Jyeṣṭha. In Sambhāji-rāje-caritra by the same author (edited by Rao Bahadur K. N. Sane, 3rd ed. of 1915) at p. 8 there is a description of the coronation of Sambhāji, son of Shivaji.

The symbols of royalty viz. the umbrella, the chowries and the cane stick are brought in to the king by principal ministers. The Viṣṇudharmottara (II. 12) states that the *cāmara* for the king must be made from the tails of *camarī* deer and must be all white with a handle of gold or silver and that the one for a councillor or purohita should be yellowish, while the same purāṇa in II. 13 describes the requisites of a royal umbrella. That the umbrella and cāmaras were inseparable emblems of sovereignty is emphasized by Kālidāsa in Raghuvaṁśa III. 16. Vide the Bṛhatsaṁhitā, chap. 71 and 72, for cāmara and umbrella.

It appears that sometimes a king took another name on coronation which was called *abhiṣekanāma*. Vide Dr. R. C. Majumdar's 'Champā' p. 157 for a list of such names from Champā and Dr. Minakshi's 'Administrative and social life under Pallavas' p. 39 for the Pallava Rājasiṁha having the coronation name Narasiṁhavarman. Certain kings, when they performed Aśvamedha, assumed new titles e. g. Kumāragupta I seems to have assumed the title of Mahendra, as is clear from some of his coins on which his name and title occur.

The Bṛhatsaṁhitā of Varāhamihira (chap. 48) lays down that the *paṭṭa* (tiara) for the king and others should be made of pure gold, that their length should be double of the breadth in the middle of it, that there should be five aigrettes in the king's tiara, three in the queen's and yuvarāja's, one in that of the commander-in-chief and none in the one that the king may give to a person as a mark of favour. Utpala in his com. on the Bṛhatsaṁhitā says that paṭṭa is the same as *mukuṭa*, while acc. to the Nītimayūkha (p. 13) and other works paṭṭa is tied on the forehead and *mukuṭa* (crown) is placed on the king's head. Vide Rājanītiprakāśa (pp. 54–55) and Rājadharmakaustubha (p. 324) for further details. The Viṣṇudharmottara (II. 14) describes the characteristics of *bhadrāsana* (the throne) for the king; vide also Rājanītiprakāśa pp. 51–52. It must be made of gold, silver or copper or a tree from which milky juice oozes when cut, it was to be one cubit and half high for a *samrāṭ*, 1¼ cubit for a king and one cubit high for a feudatory (sāmanta).

The Viṣṇudharmottara (II. 162) states that on every anniversary of the first coronation when the moon is in the same nakṣatra as that on which the first coronation took place the king should repeat the rites of coronation. The Brahmapurāṇa

quoted by the R. D. K. (p. 10) also says the same.[113b] Vide Rājanītiprakāśa p. 115 and Kaustubha p. 379 also.

Manu (VII. 217–220) warns the king against poisoning 'The king should partake of food that is well examined and prepared by servants that are trust-worthy (lit. as if they were his own self), that know the proper times (for dining), that cannot be won over and over the food spells destroying poison should have been muttered. He should mix up in all that he partakes medicines that are antidotes against poison and should always wear gems that work against poison. Only women devoted to him and well examined and found safe as regards their dress and ornaments should be allowed to touch him when fanning or bathing him or applying perfumes to his body. The king should take care in this way as regards his vehicles, bed, food, bath, applying perfumes and all ornamentation'. Kām. VII. 8 and Matsya 219.10 are very similar to Manu VII. 220. Kauṭilya (I. 17) states that the king should first secure his personal safety against his sons and wives and then the security of the kingdom against near and distant enemies. He first deals with safety from his own sons, the princes. The opinions of various authors on polity are cited (some of which have been noted above) viz. secret punishment (acc. to Bhāradvāja), keeping under guard in one place (acc. to Viśālākṣa), keeping the prince in a fort under the boundary guard (acc. to the Pārāśaras), keeping the prince away from his own kingdom in a fort belonging to a feudatory (acc. to Piśuna), sending him to his maternal relations (acc. to Kauṇapadanta), making the prince addicted to sensual pleasures (acc. to Vātavyādhi), proper pre-natal care and proper education after birth about dharma and restraint (acc. to Kauṭ.). This symposium shows how the problem of the king's safety against bad princes taxed the ingenuity of all ancient writers on Arthaśāstra and how Kauṭilya advocated the only reasonable course possible. The Matsyapurāṇa, chap. 220, also relies on training, discipline and gradual transfer of responsibility and advises the imprisonment of a bad prince in a well-guarded place furnished with comforts suitable to his

113b. अनेनैव विधानेन कुर्याद्वर्धापनं सदा। अभिषेकाद्धि यत्नेन प्रतिसंवत्सरं नृपः॥ ब्रह्मपुराण quoted in राजधर्मकाण्ड p. 10.

position[114]. In I. 20 Kauṭilya gives practical hints against the danger of fire and poisons: e. g. he says that poisonous snakes will not enter a building provided with Jīvanti, Śvetā and other plants; that cats, peacocks, mongoose and spotted deer when let loose eat serpents, that certain birds like parrots, *mainas*, malbar bird shriek when they suspect snake poison, the heron loses his consciousness in the vicinity of poison; the pheasant (jīvañjīvaka) feels exhausted; the young cuckoo dies; the eyes of *cakora* become redder[115]. Kām. (VII. 10–13) repeats the words of Kauṭ. 1.20 and the Matsya (219. 17–22) refers to the effects of poison on the same birds and a few others. The Matsyapurāṇa in chap. 219–220 closely follows Kauṭ. and Kām. and appears to be based on them (e. g. Matsya 219. 30 latter half is the same as Kām. VII. 24 first half). Vide Yaśastilaka III. pp. 511–512 for the effects of poison on birds almost in the same words as those of Kauṭ. and Kām. Vide Śukra I. 326–328. Kauṭ. I. 21, Kām. VII. 15–26, Matsya 219. 9–32 state that part of the food for the king should first be cast into fire and offered to birds and the effects noted, they dwell at great length on the different tints of the flames of fire and of the smoke when different kinds of food are cast into fire, they point out the actions and gestures of the poisoner, they prescribe that the cook and the doctor giving medicines for mixing in food as antidotes should be made to partake of the food and then the king should himself partake of it. The king has to be careful in the harem, when receiving presents or anything sent by others, when sitting in a conveyance or riding a horse or travelling in a boat or when attending festivals (Kauṭ. I. 20–21, Kām. VII. 28–47). Kauṭ. I. 20 and Kām. (VII. 44 and 50) advise the king not to trust women and even the queen and to approach even the queen after she has been examined by men 80 years old and women over 50

114. गुणाधानमशक्यं तु यस्य कर्तुं स्वभावतः ॥ बन्धनं तस्य कर्तव्यं गुप्तदेशे सुखान्वितम् । अविनीतकुमारं हि कुलमाशु विशीर्यते ॥ अधिकारेषु सर्वेषु विनीतं विनियोजयेत् । आदौ स्वल्पे ततः पश्चात्क्रमेणाथ महत्स्वपि ॥ मत्स्य 220. 5–7. Compare कामन्दक VII. 2–6 राजपुत्रा मदोद्धूता गजा इव निरङ्कुशाः । भ्रातरं वाभिनिघ्नन्ति पितरं वाभिमानिनः ॥ ... विनयोपग्रहान् भृत्यैः कुर्वीत नृपतिः सुतान् । अविनीतकुमारं हि कुलमाशु विनश्यति ॥ विनीतमौरसं पुत्रं यौवराज्येभिषेचयेत् । दुष्टं गजमिवोद्वृत्तं कुर्वीत सुखबन्धनम् ॥. Vide also अग्निपुराण 225. 3–4 for similar provisions.

115. विरज्येते in कामन्दक VII. 12 is explained by the com. as रागरहिते भवतः.

years in the harem and found[116] safe. Kauṭ. (I. 20) and Kām. (VII. 51–54) both name seven kings that met death in their queen's chambers by the stratagems of the queens themselves or those that were incited by them; viz. Bhadrasena killed by his brother concealed in the chamber of his queen (who was in love with the king's brother), the king of Karūṣa killed by his own son who had concealed himself under the bed of the queen (who was angered by the king's promise to give the kingdom to the son of a rival queen), the king of Kāśi killed by his queen who mixed fried rice with poison pretending that it was honey; the queen of the king of Sauvīra killed him with a jewel in her girdle that was smeared with poison; Vairantya was killed by his queen with her anklet smeared with poison; Jalūtha (or Jaruṣa in Kām.) was killed with a mirror (with a razor-like edge) covered with poison; Vidūratha was killed by his queen who had concealed a weapon in her braided hair. The Harṣacarita (VI) of Bāṇa mentions with additional details the cases of Bhadrasena king of Kaliṅga killed by his brother Vīrasena, the king of Karūṣa (Dadhra by name), Kāśirāja (named Mahāsena) whose queen Suprabhā killed him to secure the kingdom to her son, Jarūtha king of Ayodhyā, Vairantya named Rantideva, Vidūratha of the Vṛṣṇis killed by Bindumatī, the Sauvīra king Vīrasena killed by queen Haṁsavatī. In the Bṛhatsaṁhitā (77. 1–2) two of these, Vidūratha and Kāśirāja, are mentioned, but the latter is said to have been killed by his estranged queen with an anklet smeared with poison. Medhātithi on Manu VII. 153 quotes four of these seven. The Nītivākyāmṛta (rājarakṣāsamuddeśa 35–36, pp. 231–232) sets out six other examples of kings killed by their queens. The king has also to beware of treachery from ministers and officials. Kauṭ. (in I. 10) describes how ancient writers devised methods of ascertaining the purity or impurity of ministers by putting before them allurements regarding dharma, wealth, sexual desires and playing on their fears and gives it as his own opinion that temptations that have direct reference to the king or queen should not be placed in the way of the ministers. In the Harṣacarita VI, Skanda-

116. अन्तर्गृहगतः स्थविरस्त्रीपरिशुद्धां देवीं पश्येत्। ...आशीतिकाः पुरुषाः पञ्चाशत्काः स्त्रियो वा मातापितृव्यञ्जनाः स्थविरवर्षवराभ्यागारिकाश्चावरोधानां शौचाशौचं विद्युः। कौटिल्य I. 20; आशीतिकाश्च पुरुषाः पञ्चाशत्काश्च योषितः। शुद्ध्येरन्नवरोधानां शौचमागारिकाश्च ये॥ न हि देवीगृहं गच्छेदात्मीयात्संनिवेशनात्। अत्यर्थवल्लभोऽपीह विश्वासं स्त्रीषु न व्रजेत्॥ काम. VII. 44 and 50. Dr. Sham Sastri's translation (p. 46) of Kauṭilya 'eighty men and fifty women' is not correct.

gupta, the commander of the elephant arm of Harṣa's army, warns the Emperor against putting trust in everybody and gives 19 instances of kings that met misfortunes, death or destruction through their own carelessness and the stratagems of those about them (apart from the seven mentioned above and two more who fell victims to the wiles of their queens). Some of them are famous and deserve mention here, viz. the king of Vatsa (i. e. Udayana) who was imprisoned by the soldiers of Mahāsena that jumped out of a faked elephant; Maurya Bṛhadratha killed by his Senāpati Puṣyamitra (called 'anārya' by Bāṇa on account of his treachery to his master); Kākavarṇa Śaiśunāri (Śaiśunāgi?), Sumitra, son of Agnimitra, whose head was cut off by Mitradeva while the king fond of dancing was in the midst of actors; the Śuṅga Devabhūti killed by his minister Vasudeva; Candragupta (of the Gupta dynasty) who dressed as a charming woman cut off the king of Śakas; the foolish Maukhari king Kṣatravarman killed by bards. Vide Kāmasūtra V. 5.30 for two other examples of the Ābhira king Koṭṭarāja and Jayatsena king of Kāśi. The Nītivākyāmṛta (Dūtasamuddeśa) p. 171 states that Cāṇakya killed one of the Nandas through a *dūta* and that two other kings met death from presents of poisoned clothes and a jewelled box containing snake poison. The Yaśastilakacampū (III. pp. 431-432) sets out many instances of kings that met with death from the wrath or the machinations of their ministers, purohita &c.

From these examples one should not draw the facile and sweeping conclusion that in India the life of no king was safe. In the vast continent of India there were always numerous kingdoms at the same time. It is no wonder that in the course of several thousand years and over such vast territories, some kings met death by treachery and stratagem. This is not a phenomenon restricted to India. In a small country like England we have within two hundred years instances of the murder of the boy king Edward V and his brother prince Richard, of Lady Jane Grey nominated by Edward VI as his successor and the further fact that Cromwell during the last few months of his life was afraid of being assassinated. During about 150 years from 1789 out of 30 Presidents of the U. S. A. several such as Lincoln, Garfield and McKinley met death at the hands of assassins.

The truth is that in a monarchy the king was the pivot of the whole State. As the Matsyapurāṇa (219.34) finely puts it

'the king was the root and the subjects were the tree; in saving the king from dangers the whole kingdom was on the road to prosperity and therefore all were to make efforts to guard the king'.

Hereditary monarchy was the norm of government in ancient and medieval India. Kauṭilya expressly states (I. 17 at end) that the practice to make the eldest son the king is honoured except in the case of a calamity. At or about the time of Buddha and a few centuries thereafter there were a few oligarchies or (as some scholars prefer to call them) republics. But our Dharmaśāstra or Arthaśāstra authorities contain rather very meagre references to them. The Mahābhārata in Śānti 107 furnishes the following data about gaṇarājyas (government by groups): Internal dissensions are the root of the ruin of *gaṇas*; it is very difficult to keep lines of policy secret when there are many (when the government is that of many, i. e. an oligarchy or a republic); all members of the gaṇa in their entirety do not deserve to hear the line of policy decided upon, but the chief persons among the gaṇas should meet together and arrange among themselves to secure the welfare of the whole gaṇa; if disputes that arise among the families (or clans) are connived at by the heads of the clan, the ruin of the clan takes place which leads on to dissensions among the whole group (gaṇa). Danger from internal dissensions must be guarded against (in the case of *gaṇarājya*), external dangers are not serious (in the case of gaṇarājya). All members of the gaṇa are equal by birth and family, but they are not equal in energy, intelligence, bodily appearance and wealth. By their enemies gaṇas are broken by means of internal dissensions and bribes; therefore the greatest safety of gaṇas lies in union [117]. In these words the author of the Mahābhārata unerringly puts his finger on the weak spots of the rule of many viz. secrecy cannot be kept, there is corruption due to greed and jealousy, which bring about their downfall. In another place (Śānti 81) the Mahābhārata

117. भेदमूलो विनाशो हि गणानामुपलक्षये । मन्त्रसंवरणं दुःखं बहूनामिति मे मतिः ॥ 8 ... न गणाः कृत्स्नशो मन्त्रं श्रोतुमर्हन्ति भारत । गणमुख्यैस्तु संभूय कार्यं गणहितं मिथः । 25 ... कुलेषु कलहा जाताः कुलवृद्धैरुपेक्षिताः । गोत्रस्य नाशं कुर्वन्ति गणभेदस्य कारकम् । आभ्यन्तरभयं रक्ष्यमसारं बाह्यतो भयम् ॥ ... जात्या च सदृशाः सर्वे कुलेन सदृशास्तथा । न चोद्योगेन बुद्ध्या वा रूपद्रव्येण वा पुनः । भेदाच्चैव प्रदानाच्च भिद्यन्ते रिपुभिर्गणाः । तस्मात्संघातमेवाहुर्गणानां शरणं महत् ॥ शान्ति 107. 27–32. भेदाद्विनाशः सङ्घानां सङ्घमुख्योऽसि केशव । यथा त्वां प्राप्य नोत्सीदेदयं सङ्घस्तथा कुरु ॥ नान्यत्र बुद्धिक्षान्तिभ्यां नान्यत्रेन्द्रियनिग्रहात् ॥ नान्यत्र धनसंत्यागाद्गणः प्राज्ञेऽवतिष्ठते ॥ शान्ति 81. 25–26.

refers to the *saṅgha* of the Vṛṣṇis, of whom Kṛṣṇa was the president, and the great truth that the ruin of saṅghas is brought about by internal dissensions and corruption and it hits off the qualities required in the wise leader of the saṅgha to be four viz. sagacity, forbearance, self-control and giving up the acquisitive spirit. The words *saṅgha* and *gaṇa* are employed as synonyms in the Mahābhārata. Pāṇini (III. 3.86) states that *saṅgha* means gaṇa. Patañjali in his Mahābhāṣya (vol. II. p. 356) states that *saṅgha*, *samūha* and *samudāya* mean the same thing. Pāṇini knows two kinds of saṅghas viz. *āyudhajīvin* (who practised the profession of arms) and those that were not so and further he also indicates that in the Vāhīka country saṅghas included [118] brāhmaṇas, kṣatriyas and others (vide V. 3. 114). He names the saṅghas of Vṛkas, Trigartas, Yaudheyas, Parśus (V. 3.115–117) as *āyudhajīvin*. Kātyāyana by his *vārtika* ' kṣatriyādekarājāt saṅghapratiṣedhārtham ' on Pāṇini IV. 1.168 shows that saṅgha was differentiated from monarchy. Acc. to Kauṭilya (p. 53 above) the saṅgha of the Vṛṣṇis perished when it came in conflict with Dvaipāyana. In another place Kauṭilya says that (in some cases) the kingdom may be ruled by a clan, for the confederacy [119] of a clan is invincible, it is free from the calamity of a kingless State and therefore exists on the earth very long. Kauṭilya devotes one section (Adhikaraṇa XI) to the dealings of the ambitious king with saṅghas. There he states that securing the saṅgha on one's side is far better than securing an army or allies and makes the most interesting remark [120] that the corporation of the kṣatriyas and others in

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118. In the Karṇaparva the country of Vāhīkas is severely condemned and it is said to be the country between the Indus and the five rivers of the Panjab (chap. 44. 7) पञ्चानां सिन्धुषष्ठानां नदीनां येऽन्तराश्रिताः । तान् धर्मबाह्यानशुचीन्वाहीकानपि वर्जयेत् ॥. In chap. 44. 10 it is stated that their chief city is Śākala and in verses 11–30 and 35–38 their condemned practices are set out, and verses 31–34 say that the country of the five rivers is called Āraṭṭa and Vāhīka. In Karṇaparva 45. 6–13 the interesting fact is mentioned that in that country only one brother in a family acts as a brāhmaṇa should and that their sons do not inherit but their sister's sons take the inheritance. Vide ' Indian Culture ' vol. VI. 129–136 and vol. VIII. p. 85 ff for information on ' Vāhīka '.

119. अन्यत्रापद ऐश्वर्यं ज्येष्ठभागि तु पूज्यते । कुलस्य वा भवेद्राज्यं कुलसङ्घो हि दुर्जयः । अराजव्यसनाबाधः शश्वदावसति क्षितिम् ॥ कौटिल्य I. 17.

120. सङ्घलाभो दण्डमित्रलाभानामुत्तमः । ... ... काम्भोजसुराष्ट्रक्षत्रियश्रेण्यादयो वार्ताशस्त्रोपजीविनः । लिच्छिविकवृजिकमल्लकमद्रककुकुर-कुरुपाञ्चालादयो राजशब्दोपजीविनः । कौटिल्य XI. 1 ; विशेषतश्च सङ्घानां सङ्घधर्मिणां राजकुलानां द्यूतनिमित्तो भेदः, तन्निमित्तो विनाश इति । कौटिल्य VIII. 3.

the countries of Kāmbhoja and Surāṣṭra practise *vārtā* (husbandry and trade) and the profession of arms, while those of the Licchivikas, Vṛjikas, Mallakas, Madrakas, Kukuras, Kurus and Pāñcālas live on the title of *rājan* applied to them (i. e. they are not cultivators of the soil and soldiers, but are only chiefs or nobles). What Kauṭilya means by 'vārtā-śastropajīvinaḥ' appears to be that they were agriculturists ordinarily but were ready with their swords to defend their country when occasion required. Kauṭilya then describes in detail without any scruples how the conqueror may by various subterfuges cause dissensions among the members of the saṅgha and its leader or leaders (*saṅgha-mukhya*). In VIII. 3 Kauṭilya remarks that dissension becomes particularly rife owing to gambling among saṅghas and noble clans that have the saṅgha constitution and they are destroyed. From about the 5th or 6th century A. D. the oligarchic States or Republics became rare and gradually disappeared. We get further data about these gaṇarājyas from Buddhist works, Greek sources (like the fragments of Megasthenes), coins and inscriptions. Rudradāman (in Junāgadh Inscription of 150 A. D.) boasts that he had uprooted the Yaudheyas who had become puffed up and unbending on account of the title of heroes (*vīra*) that was prominently applied to them among all kṣatriyas[121] (E. I. vol. VIII. at p. 44). Samudragupta (in the first half of the 4th century A. D.) subjugated the Yaudheyas, Mālavas, Ārjunāyanas &c. In Gupta Inscriptions No. 58 p. 251 there is mention of a *mahārāja-mahāsenāpati* who was made their leader by the Yaudheya-gaṇa. The Bṛhatsaṁhitā in several places refers to the Yaudheyas and Ārjunāyanas (e. g. 4.25; 5.40, 67, 75; 14.25 and 28; 16.21; 17.19) and speaks of Yaudheya-nṛpa in 9.11. Vide Rapson's 'Indian coins' pp. 11 and 15 and Plate II, nos. 13-15 and Plate III, no. 20 for the coins of the Yaudheyas and Ārjunāyanas. Arrian writes in 'Indika' (tr. by MacCrindle IX. p. 208, ed. of 1926) 'from Dionysus to Sandrakottos the Indians counted 153 kings and a period of 6042 years, but among them a republic was thrice established'. MacCrindle's 'Invasion of India' (p. 121) speaks of an aristocratic government on the

121. सर्वक्षत्राविष्कृतवीरशब्दजातोत्सेकाविधेयानां यौधेयानां प्रसह्योत्सादकेन । E. I. VIII. at p. 44; यौधेयगणपुरस्कृतस्य महाराजमहासेनापतेः &c. in Gupta Inscriptions pp. 251-252. Vide Quarterly Journal of the Mythic Society of India (Silver Jubilee number) p. 114 for Yaudheyas, and J. B. O. R. S. vol. 23 p. 148.

Hyphasis or Beas. The Greek writers describing the invasion of Alexander speak of the democracies of the Oxydrakai (Kṣudrakas), Malloi (the Mālavas), the Siboi (Śibis), Sambastai (the Ambaṣṭhas) and several others. Vide K. P. Jayaswal's 'Hindu Polity' part I. chap. VIII (pp. 63–79) for Hindu Republics mentioned in Greek writings. Rhys Davids in 'Buddhist India' pp. 19 ff. summarizes the data about Indian republics derived from Buddhist works. On p. 22 he gives the names of eleven republican clans with their capitals, some of which like the Śākyas (of Kapilavastu), the Mallas (of Kusinārā and Pāvā), the Videhas (of Mithilā) and Licchavis (of Vesāli) are well-known. Rhys Davids states (p. 19) that the administrative and judicial business of the Śākyas was carried on in a mote-hall (santhāgāra) at Kapilavastu, that a single chief was chosen (but how and for what period is not known) who presided over the sessions and (when no sessions were being held) also over the State, that he bore the title of *rājā*. He mentions that at one time Buddha's cousin Bhaddiya was *rājā* and that in another passage Buddha's father Śuddhodana is styled *rājā*. He further points out (p. 26) that the Vajjians had eight confederate clans of which the Licchavis and the Videhas were the most important. K. P. Jayaswal in 'Hindu Polity' part I pp. 25–165 brings together all the data about Hindu oligarchies (or republics as he calls them) and his work deserves the serious attention of all those who are interested in the study of ancient Indian political institutions, though here and there one cannot approve of his interpretations and theories. To take only one example, he holds that the procedure prescribed by Buddha for the deliberations of the *saṅgha* in the Mahāparinibbāṇa-sutta was borrowed from the procedure followed by the republics in their deliberations and therefore he describes the procedure of the Buddhist *saṅgha* in great detail ('Hindu Polity,' part I chap. XI pp. 103–117). Dr. D. R. Bhandarkar also (in 'Some Aspects of Ancient Hindu Polity' pp. 121–125) adopts this theory. This to say the least is a gratuitous assumption. The mere fact that Buddha told the prime minister of Ajātaśatru, king of Magadha, who contemplated attacking the Vajjian confederacy, that the latter would not decline but prosper as long as they observed seven conditions and the fact that those very seven conditions were prescribed by the Buddha for the welfare of the saṅgha do not lead on to the further inference that the procedure followed by the monks in the deliberations of the meeting of the saṅgha (which is set out in such passages as the Mahāvagga IX. 3, S.B.E.

vol. XVII p. 264 ff, Cullavagga IV. 9, S. B. E. vol. XX pp. 24-27) was the procedure of the meetings of the oligarchies. The seven conditions (both for the welfare of the Vajjians and the Saṅgha) are set out in the Mahāparinibbāṇa-sutta, chap. I. (S. B. E. vol. XI. pp. 3-8) viz. holding full and frequent public assemblies, meeting together in concord and carrying out undertakings in concord, enacting nothing not already established and abrogating nothing that has been already enacted and acting in accordance with ancient institutions established in former days, honouring and revering and supporting elders and hearkening to their words, not detaining women or girls of their clans by force or abduction, honouring and supporting Vajjian shrines in town or country and not allowing proper offerings and rites to fall into desuetude, protecting and supporting the Arahats among them. On the most important points in connection with a republic or oligarchy we have no information at all, viz. who were entitled to vote, what were the qualifications for membership of the assembly that governed the State, how voting took place, what was the period for which members of the assembly were elected, whether the president was elected for life or a shorter period or was elected at all, what were the powers and procedure of the assembly. Vide Dr. Beni Prasad in 'Hindu Political Theories' p. 158 for criticisms. Rhys Davids (in 'Buddhist India' p. 41) says that according to the Jātakas there were at Vesāli (modern Basadh in the Muzaffarpur District), the capital of the Licchavis, 7707 *rājās* (or chiefs). In the Bhaddasāla-jātaka (Fausböll, vol. IV p. 148) there is a reference to a tank reserved for the bath of the families of the ruling chiefs (rājās) of the gaṇa in the city of Vesāli. In the Mahāvastu (ed. by Senart vol. I. p. 271) it is stated that there were twice eighty-four thousand nobles (rājānā) among the Licchavis. This explains what Kauṭilya means by 'rājaśabdopajīvinaḥ. These people called 'rājās' were probably the scions of the several branches of the Licchavis, who had in their hands the government and who were not doing manual (or agricultural) work. Vide Government Epigraphic Report for 1899 p. 23 and Indian Historical Quarterly vol. IV p. 652, where it is said that in an inscription from Uttaramallur the extent of land and of Vedic learning required in a candidate for election are specified as also the method of writing on tickets the names of candidates. But such records, even in South India, are very few and refer to village sabhās and there is nothing in the works on dharmaśāstra or arthaśāstra about the methods of

election to political assemblies and the qualifications of candidates. Vide Dr. D. R. Bhandarkar's 'Some aspects of Ancient Hindu Polity' (1929) pp. 101–121 for a concise statement of several types of republics in Ancient India.

Another important question is whether in monarchical states there were popular assemblies of elected representatives or, in modern language, Parliaments. The words 'sabhā' and 'samiti' require consideration in this connection. In Ṛg. I. 91.20 Soma is said to confer a son who is *sādanya*, *vidathya* and *sabheya*, from which it follows that sabhā is in some respects different from 'vidatha'. In Ṛg. II. 24. 13 a vipra (a priest or composer of hymns) is said to be *sabheya* 'clever or eminent in a sabhā'. In Ṛg. X. 34. 6 'sabhā'[122] appears to mean a gambling hall. In Vāj. S. XXX. 6 *sabhācara* seems to mean only 'sabhāsad', a member of a judicial tribunal, while in XXX. 18 the sabhāsthāṇu is given up to Āskanda in the symbolic Puruṣamedha. In the Vāj. S. XVI. 24 there is an obeisance to *sabhās* and *sabhāpatis* (presidents of sabhās). In Atharvaveda VII. 12. 1 'sabhā' and 'samiti' are said to be the two daughters of Prajāpati, from which it may by argued that they were very similar but somewhat different. In Atharvaveda XV. 9. 2 also *sabhā* and *samiti* are separately mentioned. In Tai. Br. III. 7.4. the word sabhāpāla occurs and sabhā is explained as 'gambling-hall' by Sāyaṇa. In Ṛg. X. 97. 6 and Vāj. S. XII. 80 it is said 'that *vipra* is said to be a doctor (bhiṣak) in whom medicinal herbs come together as nobles (rājānaḥ) in a *samiti* (meeting or battle)'. In Ṛg. X. 191. 3 the word 'samiti' seems to mean no more than a meeting or meeting place. In Atharvaveda V.19.15[123] we have 'the assembly (samiti) does not suit him (or is not won over by him) who harasses a brāhmaṇa'. In the Chāndogya Up. (V. 3. 1) Śvetaketu is said to have repaired to the assembly (*samiti*) of the Pañcāla country, where the king Pravāhaṇa Jaivali asked him five questions which the former could not answer and then he approached the next morning the king who was in his *sabhā*. Here it seems that both words are applied to the same assembly. It is impossible to say how the *sabhā* or *samiti* was constituted in the Vedic period. All that we can say is that it was an assembly of people to which the king, learned men and others went. It is extremely doubtful whether it was an elective body. Probably it was an *ad hoc* assembly of such people as cared to

122. सभामेति कितवः पृच्छमानो जेष्यामीति तन्वा शूशुजानः । ऋ. X. 34. 6.

123. न वर्षं मैत्रावरुणं ब्रह्मज्यमभिवर्षति । नास्मै समितिः कल्पते न मित्रं नयते वशम् ॥ अथर्व V. 19. 15.

be present. K. P. Jayaswal (in 'Hindu Polity' part I p. 11) holds that 'samiti' in the vedic age was the national assembly of the whole people, that it was the king's duty to attend it (*ibid.* p. 12) and that 'sabhā' was the standing and stationary body of selected men working under the authority of the samiti (*ibid.* p. 18)'. This is all conjectural, as Jayaswal himself admits 'the *sabhā* was certainly related to the *samiti*, but its exact relationship is not deducible from the data available' (*ibid.* p. 18).

These frantic efforts by such scholars as Jayaswal to prove that India had elective assemblies are made to counteract the sinister propaganda of many English writers that East is East and West is West and that the democratic institutions of the West cannot be transplanted with success on the soil of India. This is mischievous propaganda. There were no democracies even in Europe a few hundred years ago; even in England, France and a few other countries democracies have been introduced and have thrived within a short time. There is no reason why they should not do so in India, if honest efforts are made and difficulties are not purposely created by vested interests. Korkunov in 'General theory of law' (tr. by Hastings, 1922, New York p. 296) says 'According to the historical school the political organization of England is good for England alone, for it corresponds to a natural genius very peculiar....This doctrine of the historical school is false, since we have already seen that a change produced in the social ideal may bring about a change in the whole social development. The influence of one people on the life of another is a proof of this. The ideal is a force supporting the social life and this ideal may be the result not merely of our own special experience, but also of the experience of neighbouring peoples'.

Two other words require consideration, viz. *Paura* and *Jānapada*. The word 'paura' occurs in Ṛg. V. 74. 4 where it has three applications, viz. to the Aśvins, to the sage Paura (who was an Ātreya) and to the cloud (acc. to Sāyaṇa). K. P. Jayaswal (in 'Hindu Polity', part II pp. 60–108) devotes considerable space to 'Paura' and 'Jānapada' and one may at once admit that he displays great learning, industry and ingenuity. in his discourse on this subject. He holds that the Paura and the Jānapada were elective parliamentary bodies or what may be called the Hindu Diet and he sums up (on p. 108) their functions as follows 'we had an organism or a twin

organism, the Paura-Jānapada, which could depose the king, who nominated the successor to the throne..., whose President was apprised by the king of the policy of state decided upon in the council of ministers, who were approached and begged by the king in all humility for a new tax, whose confidence in a minister was regarded as an essential qualification for his appointment as Chancellor, who demanded and got industrial, commercial and financial privileges for the country, who could enact statutes even hostile to the king, in fine who could make possible or impossible the administration of the king.' This is a very glowing picture of parliamentary institutions in ancient India. But unfortunately it cannot be accepted as the truth. Many scholars such as Prof. B. K. Sarkar (in 'Political Institutions and theories of the Hindus' p. 71) and Dr. Beni Prasad (in 'The State in ancient India' pp. 498-500) do not subscribe to this theory. For want of space detailed examination of Jayaswal's theory cannot be entered upon. But a few remarks must be made. The sheet anchor of his theory (in 'Hindu Polity' part II. p. 68) is a passage in the Hāthigumphā Inscription of Khārveḷa (E. I. vol. XX at p. 79 ll. 6-7) which runs 'Rājasūyaṁ saṁdasayaṁto sava-kara-vaṇam anugaha-anekāni satasahasāni visajati poraṁ jānapadaṁ' and which he himself translates (at p. 78) as 'remits all tithes and cesses, bestows many privileges amounting to hundreds of thousands on the paura and jānapada'. Jayaswal himself has changed his views about the interpretation of this difficult record so many times (e. g. J. B. O. R. S. vol. III pp. 425-507 may be compared with his interpretations in E. I. vol. XX p. 71) that one can never feel sure even of his latest readings and translations. As a matter of fact Dr. Barua differs and reads 'pora-jānapadam' as one word (I. H. Q. vol. 14 p. 464) and does not accept Jayaswal's interpretation (p. 477). If the word is 'pora-jānapadam' it would simply be a *samāhāra-dvandva* compound and mean 'all inhabitants of the capital and the rural inhabitants' and the singular need not necessarily lead to the inference that a parliament of city-dwellers and rural population is meant. Even supposing that the correct reading is 'poram-jānapadam', that would not matter much. We shall have to understand the word 'janam' after it, since the word 'jana' is often employed after 'paurajānapada' e. g. in the 8th Rock Edict at Girnar 'janapadasa ca janasa dasanam' C. I. I. vol. I. pp. 14-15, in Rudradāman's inscription in E. I. vol. VIII p. 44 'apīḍayitva paura-jānapadam janam' and 'paurajānapada-janānugrahārtham'

at p. 45 or in the Rāmāyaṇa II. 2. 51, II. 111. 19 'paurajānapadam janam'). Lastly if the paurajānapada organization had (as said by Jayaswal in the quotation cited above) the power to depose kings and pass even hostile statutes, is it not a contradiction in terms to say that, instead of the Parliament or Diet deciding to remit certain taxes, it was the king who remitted taxes and bestowed favours (or privileges) of lakhs of rupees on the supposedly all powerful Paura-Jānapada assembly? In all passages that he quotes from the Rāmāyaṇa and other classical sanskrit works the ordinary meaning of *paura* (residents of the capital) and *jānapada* (inhabitants of the country other than the capital) is quite enough and it is impossible to hold that any elective body is meant. In most passages the plural 'paura-jānapadān' is used. If 'Paura-jānapada' stands for one elective body or two bodies, no explanation is offered why the plural should generally be used and not the dual. Kauṭilya (I. 19) states that the king should in the 2nd part of the day (divided into eight parts) look into the causes of the paura-jānapadas. Jayaswal (in 'Hindu Polity', part II p. 95) misinterprets this passage by saying that the king had to set apart one period daily for the business of the paura-jānapada assembly. Here again the plural is used and the dictum of Kauṭilya is the same as that of Yāj. I. 327 who says that the king should look into the law-suits (vyavahārān) of the people. The word 'kārya' is employed by Manu VIII. 43, Nārada and other writers on vyavahāra in the sense of 'law-suit'. Yāj. II. 36 says that the king should restore to the jānapada property stolen by thieves. Jayaswal (in 'Hindu Polity', part II. p. 93) presses the singular 'jānapadāya' into his service and holds that it was the popular assembly that demanded the restoration of the things stolen. This, to say the least, is twisting the plain words of Yāj. The Mit. paraphrases the word to mean 'to the person dwelling in his country from whom the property was stolen'. The corresponding passage of Manu VIII. 40 (dātavyaṁ sarva-varṇebhyo rājñā corair-hṛtam dhanam) is quite clear, since it fortunately does not use the word jānapada and Medhātithi explains it as 'it should be restored to those from whom it was stolen'. Jayaswal (in 'Hindu Polity' part II p. 79) holds that a passage in the Arthaśāstra (II. 14) refers to the fact that the Paura-Jānapada assembly got gold coins minted by the royal mint-master.[124]

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124. सौवर्णिकः पौरजानपदानां रूप्यसुवर्णमावेशनिभिः कारयेत् । निर्दिष्टकालकार्यं च कर्म कुर्युः । अर्थशास्त्र II. 14.

But the plain meaning is that the mint-master was to mint standard silver and gold coins for all people when they brought bullion to him to have coins struck. One striking circumstance to be considered is that, though in all works on polity a *rājya* is said to have seven elements, none of them includes a political elective assembly (like the paura-jānapada postulated by Jayaswal) among them. They only enumerate the country and the capital and declare even these as of lesser importance than the king and the ministers. Another matter that makes the existence of powerful elective political assemblies in monarchies most unlikely is the total absence of any reference in works on polity to the method of election, the system of voting, the qualifications of members, the period for which the assembly was elected and allied matters. When medieval writers like Aparārka on Yāj. II. 1 (p. 600) quote from Bṛhaspati verses about four kinds of sabhā, they refer only to judicial tribunals of various sorts and grades (the same verses are quoted as Hārīta's in Rājanītiratnākara p. 20). Vide n. 368 below.

If elective popular assemblies did not exist, then it may be asked whether the king was an absolute monarch or a despot or whether there were any checks that mitigated or regulated the power and doings of monarchs. The answer is that there were such checks and limitations. These were of various kinds. Exhortations addressed to the king himself exercised a restraining influence. For example, Kāt. (10) says 'the king who gives way to wrath without proper thought would reside in a horrible hell for half a Kalpa'. The importance of dharma as an all-embracing institution was impressed upon the king by our writers so frequently that it must have had its psychological effect on every king. The idea that *daṇḍa* personified as a Deity might strike down the bad king himself (Manu VII. 19, 27, 28, 30, Yāj. I. 354–356) would tend to keep even a whimsical king within bounds. The views of ancient writers have already been cited according to which the king was not to act as he pleased, but was to regard his high office as a sacred trust and was to rule according to the dictates of the śāstras. These views created public opinion which must have certainly influenced the king's acts. The ideal king Rāma is depicted as having abandoned his queen Sītā (whom he knew to be pure) because the people could not accept her as pure after her long stay in Rāvaṇa's prison. Vide Rāmāyaṇa VII. 45. Then there were the ministers whose advice the king was enjoined to seek. Besides there was the purohita and there were learned brāhmaṇas,

who were to propound what dharma was, whose directions he was to carry out and who were supposed to have power to ruin a bad king (vide Vas. I. 39–41, Gautama XI. 12–14, Manu IX. 320). Vide H. of Dh. vol. II. pp. 138–145 for the peculiar sanctity attaching to the person of a brāhmaṇa and the superior position of brāhmaṇas as a class *vis-a-vis* the king. There was a deep-rooted faith that the rules of the śāstras (the Śrauta and Smārta dharma) were divinely inspired and were above the king. Observance of dharma was the great social and political ideal from very ancient times for all including the king. This is most emphatically put in the Bṛ. Up. I. 4. 11–14, where it is stated " even after creating the four varṇas He (the Creator) did not think that stability had been attained. He then created the most excellent *Dharma* which is the might of the mighty (i. e. more powerful than the warrior caste). There is nothing higher than dharma. Even a very weak man hopes to prevail over a very strong man on the strength of dharma, just as (he prevails over a wrong-doer) with the help of the king. So what is called dharma is really truth. Therefore people say about a man who declares the truth that he is declaring dharma and about one who declares what dharma is they say that he speaks the truth. These two (dharma and truth) are this " (i. e. one).[125] Kāmandaka I. 14 stated that the Yavana king ruled over the earth for a long time because he ruled according to the dictates of dharma. In his administration of justice the king was to be checked by the judge and sabhyas, who were fearlessly to render advice to the erring king (as will be shown in the section on vyavahāra). Besides corporations and guilds were powerful and had a sort of self-government. Manu (VIII. 336 and Yāj. II. 307) went so far as to prescribe a heavy fine which the king was to inflict on himself for his illegal exactions and punishments and to direct that the king should distribute among brāhmaṇas wealth forfeited by grave sinners (Manu IX. 243–244). Lastly there was the final sanction that the śāstras allowed the subjects to abandon a worthless king or even to kill a misguided one or tyrant, as stated above (vide Manu VII. 27–28, Arthaśāstra I. 4).[126]

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125. स नैव व्यभवत्तच्छ्रेयोरूपमत्यसृजत धर्मं तदेतत्क्षत्रस्य क्षत्रं यद्धर्मस्तस्माद्धर्मात्परं नास्ति । अथो अबलीयान्बलीयांसमाशंसते धर्मेण यथा राज्ञा । एवं यो वै स धर्मः सत्यं वै तत् तस्मात्सत्यं वदन्तमाहुर्धर्मं वदतीति धर्मं वा वदन्तं सत्यं वदतीत्येतद्ध्येवैतदुभयं भवति । बृह. उप. 1. 4. 14.

126. दुष्प्रणीतः (दण्डः) कामक्रोधाभ्यामज्ञानाद्वानप्रस्थपरिव्राजकानपि कोपयति किमङ्ग पुनर्गृहस्थान् । अर्थशास्त्र 1. 4.

Kauṭilya (VIII. 3) when dealing[127] with the evil results of want of discipline in a king states that kings who are hot-tempered are known to have fallen victims to popular fury (or the fury of ministers). We may say that in theory and so far as ordinary people were concerned the sovereign's power was absolute and unlimited as Manu IX. 9–12 aptly illustrate and as Bṛhat-Parāśara states 'the king is Brahmā, Śiva, Viṣṇu, Indra, he is the giver, the destroyer, and the enforcer according to the karma of his subjects'. But there were (as stated above) very real checks and limitations that effectively prevented him from exercising his undoubtedly unlimited powers. These checks, though real, cannot be called constitutional in the sense in which that word is used in modern times. As said by Nārada the subjects are dependent while the king is uncontrolled, but he could not go against the śāstra (vide Haradatta on Gaut. XI. 2).

In modern times the activities of a sovereign person are three-fold, viz. executive, judicial and legislative. The judicial activities of the ancient Indian king will be dealt with in another section on law and the administration of justice. One great difference between ancient and modern societies is that the legislative action of the king was extremely limited in ancient times, while in modern times people are more and more looking to legislation for regulating all manner of things. Manu (VII. 13) lays down that since the king has in him the glory of all deities, whatever rule as regards desirable matters the king establishes and whatever action he declares as undesirable among those actions that are harmful, should not be transgressed by any one. In his gloss on this verse Medhātithi carefully points out what orders the king can issue and on what subjects he cannot issue orders. He gives the following instances of orders of both kinds: 'To-day all should observe a festival in the capital; all should attend a marriage ceremony at the house of the minister; animals should not be killed to-day by the butchers and birds should not be caught; debtors should not be harassed by creditors on these days (to be specified); no one should associate with such and such a man (an undesirable person); no one should allow a certain (undesirable) person to enter the house'. Medhātithi adds that the king is not authorised to interfere with the *śāstric rules* governing the

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127. अविनीतो हि व्यसनदोषान् न पश्यति। तानुपदेक्ष्यामः । कोपजस्त्रिवर्गः कामजश्चतुर्वर्गः तयोः कोपो गरीयान् सर्वत्र हि कोपश्चरति । प्रायशश्च कोपवशा राजानः प्रकृतिकोपैर्हताः श्रूयन्ते । अर्थशास्त्र VIII. 3.

varṇas and āśramas such as the performance of agnihotra.[127a] This gloss of Medhātithi occurs word for word in the Rājanītiprakāśa (pp. 23–24), which gives a more correct text than the printed editions of Mandlik and Gharpure. Kauṭilya (II. 10) devotes a chapter to the drawing up of śāsanas, particularly with reference to their linguistic elegance and diplomatic etiquette. The Śukranītisāra (I.312–313) prescribes that the king's edicts (śāsana) should be proclaimed to the subjects by beat of drum, that his edicts should be written and displayed where four roads meet, and that the king should declare that breaches of the orders would entail heavy fines. In I. 292–311 Śukra gives instances of such orders, the most important of which are: Watchmen should take rounds in the several streets every one hour and a half at night in order to prevent thieves and paramours moving about; people should not employ abuse or beating towards their slave, servant, wife, son or pupil; no one should practise deceit in respect of measures, weights, coins, resins, metals, ghee, honey, milk, fat, flour; no document should be got by force; no bribes should be taken nor should any bribes be given to persons engaged in doing the king's work; no one should offer shelter to bad characters, thieves, paramours, those who hate the king, the enemy; parents, persons worthy of honour, learned men, men of good character should not be disrespected or ridiculed; no dissensions should be sown between husband and wife, master and servant, between brothers, between teacher and pupil, between father and son; no interference or obstruction should be caused to wells, parks, boundaries, *dharmaśālās*, temples, roads or to those who are deficient in a limb; without the king's permission no one should engage in gambling, selling liquor, hunting, bearing arms, sale or purchase of cattle or elephants or horses or camels or she-buffaloes or slaves or immoveable property or silver, gold, gems, intoxicants, poisons, drugs, the profession of medicine or should pass a sale deed, deed of gift or give a decision about a debt; no one should falsely accuse another of the great sins, nor take treasure trove, nor frame new rules for clubs or convivial gatherings (*samāja*) nor should publish slander against a caste, nor should appropriate property which is without an owner or has been lost, nor divulge the (king's) lines of policy, nor babble about the vices of the king; the people should not

127a. न त्वग्निहोत्रव्यवस्थायै वर्णाश्रमिणां राजा प्रभवति स्मृत्यन्तरविरोधप्रसङ्गात्, अविरोधे त्वस्मिन् विषये वचनस्यार्थवत्त्वात् । मेधा० on मनु VII. 13.

even think of forsaking their dharma, speaking untruth, committing adultery with another's wife, giving false evidence or fabricating documents, accepting gifts secretly, committing thefts and engaging in other desperate acts, engaging in sedition; public servants should not exact more than the tax already settled; only such weights and measures are to be used as bear the royal stamp; all subjects should strive to possess good qualities; desperadoes should be arrested and handed over to the king; bulls let loose (in memory of the dead) should be kept well controlled and fed by those who let them loose. Medhātithi on Manu VIII. 399 states that a king may prohibit the export of foodstuffs from the kingdom in a famine. The several edicts of Aśoka show that his orders were framed on the same lines that are contained centuries later on in the Śukranītisāra. Most of his proclamations insist on moral virtues such as truthfulness, obedience and reverence to parents, elders and preceptors, honouring brāhmaṇas and śramaṇas, kindness to animals, tolerance of other faiths. Proclamations that may be called positive laws are very few, such as his order in Pillar Edict IV to give three days' respite to criminals condemned to death (C. I. I. vol. I p. 125) or his regulations restricting the killing of animals contained in the 5th Pillar Edict (C. I. I. vol. I. p. 138) or in the First Rock Edict at Girnar (p. 7) 'no living being must be killed or sacrificed and no festival meeting must be held'. In the reign of Avantivarman of Kashmir the killing of living beings was prohibited for ten years (vide Rājataraṅginī V. 64). Law-making in the modern sense is almost entirely lacking in the smṛtis. Gaut. XI. 19-25 show[128] that the king was to find the law required for the decision of causes from the following, viz. (1) the Veda, Dharmaśāstras, the Aṅgas (lores auxiliary to the Veda such as grammar, exegesis, metrics etc.), Upavedas, Purāṇas; (2) customs of countries, castes and families that were not opposed to the Veda; (3) the usages of husbandmen, traders, herdsmen, moneylenders and artizans; (4) ratiocination; (5) the opinions[128a] delivered

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128. तस्य च व्यवहारो वेदो धर्मशास्त्राण्यङ्गान्युपवेदाः पुराणम् । देशजातिकुलधर्माश्चाम्नायैरविरुद्धाः प्रमाणम् । कर्षकवणिक्पशुपालकुसीदिकारवः स्वे स्वे वर्गे । ... न्यायाधिगमे तर्कोऽभ्युपायः ।...विप्रतिपत्तौ त्रैविद्यवृद्धेभ्यः प्रत्यवहृत्य निष्ठां गमयेत् तथा ह्यस्य निःश्रेयसं भवति । गौ. XI. 19-26.

128a. चत्वारो वेदधर्मज्ञाः पर्षत् त्रैविद्यमेव वा । सा ब्रूते यं स धर्मः स्यादेको वाध्यात्मवित्तमः ॥ या. I. 9, on which विश्वरूप remarks शङ्खोऽप्याह । श्रुतिविरोधे त्रैविद्यसमवायेषु निर्णयः इति यथाकल्पं शाक्यास्तेऽनुयुरिति च ।. These two show that pariṣad and traividya were more or less synonymous.

by the assembly (pariṣad) of men deeply learned in the three Vedas. The authoritativeness of customs, usages and conventions and their relation to śāstra will be discussed later on. In the decision of causes there were four deciding factors, dharma, vyavahāra, caritra and rājaśāsana, which will also be dealt with later. So royal edicts or orders first came to be made in the administration of justice and probably served as laws or precedents in later times. Vide H. of Dh. vol. II. pp. 968–970 for the role of pariṣads in religious matters. Yāj. I. 9 and Śaṅkha speak of *pariṣad* or assembly of learned men as final authorities on dharma.

The executive functions of the king required a large number of ministers and officers. This topic will be dealt with immediately below.

There is another way of looking at the king's functions viz. they were religious and secular. The first required him to do certain acts for propitiating gods and unseen powers and removing dangers therefrom with the help of the purohita and sacrificial priests (vide Gaut. XI. 15–17, Yāj. I. 308) and he had to guard dharma. His secular functions included those that led to prosperity, that helped the people in famine and similar calamities, dealing even-handed justice, guarding person and property from thieves and trespassers and against invasion.

The Mahābhārata records the tradition that many kings of former times abdicated the throne in favour of their sons and resorted to the forest as hermits. Vanaparva 202.8 mentions Bṛhadaśva who crowned his son Kuvalāśva. Vide also Vāyu 88.32. Dhṛtarāṣṭra says to Yudhiṣṭhira that in their family it was customary for kings to transfer the sovereignty to their sons and resort to a forest towards the close of their lives (Āśramavāsi 3.38). Vyāsa says that that was the practice of all *rājarṣis* (Āśramavāsi 4.5) and the Āśramavāsiparva (20) mentions the names of several such kings. Vide also Śānti 21.15. In Ayodhyā 23.27, 94.19 this practice is referred to.[129] In the Raghuvaṁśa (I. 8, XVIII. 7, 9, 26) Kālidāsa says that in the family of Raghu kings in their old age became *munis* (hermits) and in chap. VIII. 11–23 he draws a fine contrast between the lives of Aja and his father Raghu (who had become a *yati*). There are Jain traditions of some antiquity that connect the

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129. पूर्वराजर्षिवृत्त्या हि वनवासोऽभिधीयते । प्रजा निक्षिप्य पुत्रेषु पुत्रवत्परिपालने ॥ अयोध्या 23. 27; इदमेवामृतं प्राहू राज्ञि राजर्षयः परे । वनवासं भवार्थाय प्रेत्य मे प्रपितामहाः ॥ अयोध्या 94. 19.

great Jain sage Bhadrabāhu, the last Śrutakevalin, with Candragupta Maurya, who is said to have abdicated in favour of his son and to have gone to Śravaṇa Belgoḷa. Vide Indian Antiquary, vol. 21 pp. 156 ff where Fleet criticizes this tradition and rejects it. In the Divyāvadāna (XXIX p. 431, ed. by Cowell and Neil) it is stated that Aśoka died destitute of power[130] and possessions and Fleet (in J. R. A. S. for 1913 pp. 656-658) says that there is in this probably a reminiscence of abdication by Aśoka. King Lavaṇaprasāda of the Vāghela dynasty in Gujerat abdicated in favour of his son Vīradhavala (1233-38 A. D.). Vide Bombay Gazetteer, vol. I part 1 pp. 198, 200, 206.

Kauṭilya (VIII. 2) speaks of a novel rule called 'dvairājya'[131] (sovereignty of two) and distinguishes it from 'vairājya'. The Mss. differ in their readings, but the reading given in the footnote by Dr. Sham Sastri seems preferable. Kauṭ. remarks "As between dvairājya and vairājya (foreign rule) the former perishes on account of mutual hatred and rivalry; but the latter according to the *ācāryas* is enjoyed by foreigners as it is, when it pays attention to winning over the subjects; 'No' says Kauṭilya 'dvairājya' (generally) exists between father and son or between two brothers, their welfare is the same and therefore by reason of the influence of *amātyas* (over the two rulers) it can last, but *vairājya* comes into existence by being seized from another king who is living and therefore the (foreign ruler) thinking 'this country is not mine' impoverishes it and carries off its wealth or treats it as a chattel (for sale) or when he finds that the country is disaffected towards him abandons it and goes away". This remarkable passage contains the mentality of foreign rulers in a nutshell. Manu IV. 160 in a lucid and laconic manner states how individual and national happiness lies in freedom. Kālidāsa in his Mālavikāgnimitra[132] (Act V) appears to refer to the conception

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130. अशोक is made to say 'दाक्षिण्यादनृतं हि किं कथयथ भ्रष्टाधिराज्या वयं शेषं त्वामलकार्धमित्यवसितं यत्र प्रभुत्वं मम । ऐश्वर्यं धिगनार्यमुद्धततटीतोयप्रवेगोपमं मर्त्येन्द्रस्य ममापि यत्प्रतिभयं दारिद्र्यमभ्यागतम् ॥' दिव्यावदान XXIX p. 431.

131. द्वैराज्यवैराज्ययोः द्वैराज्यमन्योन्यपक्षद्वेषानुरागाभ्यां परस्परसंघर्षेण वा विनश्यति । वैराज्यं तु प्रकृतिचित्तग्रहणापेक्षि यथास्थितमन्यैर्भुज्यत इत्याचार्याः । नेति कौटिल्यः पितापुत्रयोर्भ्रात्रोर्वा द्वैराज्यं तुल्ययोगक्षेमममात्यावग्रहं वर्तयतीति । वैराज्यं तु जीवतः परस्याच्छिद्य नैतन्ममेति मन्यमानः कर्शयत्यपवाहयति पण्यं वा करोति विरक्तं वा परित्यज्यापगच्छतीति । अर्थशास्त्र VIII. 2.

132. तत्रभवतोर्भ्रात्रोर्यज्ञसेनमाधवसेनयोर्द्वैराज्यमिदानीमवस्थापयितुकामोऽस्मि । तौ पृथग्वरदातीरे शिष्टामुत्तरदक्षिणे । नक्तंदिवं विभज्योभौ शीतोष्णकिरणाविव ॥ द्विधा विभक्तां श्रियमुद्वहन्तौ धुरं रथाश्वाविव संग्रहीतुः । तौ स्थास्यतस्ते नृपतेर्निदेशे परस्परावग्रहनिर्विकारौ ॥ मालविका॰ V. 13-14.

of dvairājya when he makes Agnimitra say that the latter desires to establish a dvairājya for the brothers Yajñasena and Mādhavasena on the north and south banks of the river Varadā, who would both remain under the command of the king (Agnimitra). In the Mahābhārata a similar rule of two brothers, Vinda and Anuvinda in Avanti, appears to be referred to (vide Udyogaparva 166, cr. ed. chap. 163). MacCrindle in 'Invasion of India by Alexander' p. 296 quotes Diodorus to the effect that Alexander sailing up the river came to Taula (Paṭala?) a city of great note with a political constitution drawn on the same lines as the Spartan, for in this community the command in war was vested in two hereditary kings of two different houses, while a council of elders ruled the whole State with paramount authority. Vide Jayaswal's 'Hindu Polity' part I pp. 96–97 and Dr. D. R. Bhandarkar's 'Ancient Indian Polity' p. 99–100 for some further details on dvairājya from Buddhist and other sources.

CHAPTER IV

MINISTERS

Amātya—The second of the seven elements of *rājya* is the *amātya*, which word may be translated as 'minister.' There are three words that are interchangeable though sometimes distinguished, viz. *amātya*, *saciva* and *mantrin*, the first being the oldest of the three. A Kārikā on Pāṇini (IV. 2. 104) teaches the formation of the word with the affix *tyap* (tya) from *amā* meaning 'near or with' (vide Mahābhāṣya, vol. II. p. 292). In Ṛg. IV. 4. 1[133] there is the germ of this word 'O Agni! Go like a king riding an elephant, accompanied by his ministers'. Yāska (in Nirukta VI. 12) explains 'amavān' as 'amātyavān,' though two more explanations of the word are offered by him. The word *amātya* itself occurs in Ṛg. VII. 15. 3, but there it is an adjective and means 'our own' or 'abiding in our house'. In some of the sūtras like the Baudhāyanapitṛ-medhasūtra (I. 4. 13, I. 12. 7) the word amātya is used in the sense of 'near male relations in the house'. Vide H. Dh. vol. II. p. 588 n. 1375. The word 'amātya' occurs in the sense of minister in Āp. Dh. S. II. 10. 25. 10 'The king should not live better or more luxuriously than his *gurus* (elders) and his ministers (gurūn-amātyānśca nātijīvet)'. The word 'saciva' occurs in the Ait. Br. (XII. 9) where it is said that Indra considered the Maruts as his 'sacivas' (helpers or comrades). The necessity of *amātyas* or *sacivas* is stated in graphic language by several writers. Kauṭilya (I. 7 last verse) says 'kingship is possible only with (the aid of) assistants, a single wheel cannot work (a chariot); therefore the king should appoint ministers and listen to their opinions'. Manu (VII. 55 = Śukra II. 1) says 'it is difficult for a person single-handed to accomplish even an easy task; how can government particularly, which has great good as its aim, be accomplished without helpers'? The Matsya-purāṇa (215. 2) prescribes 'the king, while his head is still wet with the waters of coronation, if he wants to supervise his State, should choose his helpers, as in the latter the kingdom secures stability'. Matsya 215. 3 is the same as Manu VII. 55. Vide

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133. कृणुष्व पाजः प्रसितिं न पृथ्वीं याहि राजेवामवाँ इभेन । ऋ. IV. 4. 1; याहि राजा इव अमात्यवान् अभ्यमनवान् स्ववान् वा । निरुक्त VI. 12.

Viṣṇudharmottara II. 24. 2–3 which are the same as Matsya 215. 2–3; also Śānti 106. 11 and Rājanītiprakāśa p. 174. From Arthaśāstra I. 7 and 8, Manu VII. 54 and 60, Kām. IV. 25, 27, XIII. 24 and 64 it appears that they use the words saciva and amātya as synonyms. Rudradāman in his Junāgadh Inscription[134] (E. I. vol. VIII. p. 36 at p. 44) states that his great enterprise to repair the Sudarśana lake was disapproved of by his advisory (mati-saciva) and executive councillors (karma-saciva) who were all endowed with the qualities required in amātyas and yet who were averse to the project and had no enthusiasm for it, since the breach to be repaired was very great. Here sacivas are divided into two sorts, those who give advice and those who execute the business decided upon and the word saciva seems to be a synonym of amātya. Amara[135] states that the amātya who is a *dhīsaciva* (i. e. *matisaciva*) is called a mantrin, while amātyas other than the mantrin are called karmasacivas. These distinctions are often not observed. Sumantra is called amātya in Rāmāyaṇa I. 7. 3 and the best of mantrins in I. 8. 4. In Ayodhyā 112. 17 amātya and mantrin seem to be distinguished. From Kauṭ. I. 8 (last verse) 'Having divided the spheres of their powers and having taken into consideration the time and place and the work they have to do, all these persons should be appointed as ministers (amātyas), but not as mantrins,' it follows that mantrins were regarded by Kauṭilya as of a higher grade than amātyas in general. The R. N. P. p. 178 says that the amātyas are also styled mantrins. Kauṭilya states (I. 10) how amātyas are to be tested by *upadhās* i. e. by means of tempting them as regards each of *dharma*, *artha*, *kāma*, and *bhaya* (fear) and to be employed if found honest after any one of the four tests, while *mantrins* were to be appointed only if their integrity and loyalty were proved by all the tests combined. Upadhā[136] is defined by the Nītivākyāmṛta p. 111 as 'testing the mind of a person as regards dharma, artha, kāma and bhaya by various devices' (employed by secret agents). Kāt. (4–5) quoted by R. N. P. p. 136 states that the minds of kings always go astray on the (slightest) cause by

134. अस्मिन्नर्थे महाक्षत्रपस्य मतिसचिव-कर्मसचिवैरमात्यगुणसमुद्युक्तैरतिमहत्वाद्भेदस्यानुत्साहविमुखमतिभिः प्रत्याख्यातारम्भम् &c. E. I. VIII. p. 36 at p. 44, l. 17

135. मन्त्री धीसचिवोऽमात्योऽन्ये कर्मसचिवास्ततः। अमरकोश II, क्षत्रियवर्ग.

136. धर्मार्थकामभयेषु व्याजेन परचित्तपरीक्षणमुपधा। नीतिवाक्यामृत (मन्त्रिसमुद्देश 14 p. 111); उपेत्य धीयते यस्मादुपधेति ततः स्मृता। उपाया उपधा ज्ञेयास्ताभिरमात्यान्परीक्षयेत्॥ कामन्दक IV. 27.

reason of the fact that they possess great valour, knowledge, wealth and particularly the fact that they possess absolute power; therefore brāhmaṇas should always enlighten the mind of the king as to the duties of a king.

About the number of members in the council of ministers there has been a great divergence of views from ancient times. Kauṭ. I. 15 and Kām. XI. 67-68 state that according to the Mānava school the council (*pariṣad*) of ministers should be constituted of twelve amātyas, acc. to the Bārhaspatyas of 16, acc. to the Auśanasas of 20, but Kauṭilya's own opinion was that the number is determined by the power or exigencies of the State (*yathāsāmarthyam*). The Bālakāṇḍa (7. 2-3) states that Daśaratha had eight honest and devoted amātyas (who are then named). Manu VII. 54 and Mānasollāsa (II. 2. verse 57) require that the king should select seven or eight ministers who should be hereditary, versed in the śāstras, brave, born of high family and well-tested. This advice was followed by Shivaji, the founder of the Maratha empire, who had a council of eight ministers (*Pradhānas*). Vide Ranade's 'Rise of the Maratha Power' pp. 125-126 where he describes the functions of the eight ministers called 'Mukhya-pradhāna' (Prime minister)', Pant Amātya (Finance minister), Pant Sachiva (General Accountant and Auditor), Senāpati (Commander-in-chief), Mantri (in charge of king's private affairs), Sumanta (Foreign Secretary), Panditrao (in charge of the Ecclesiastical Department), Nyāyādhīsha (Chief Justice). This list was probably taken by Shivaji's advisers from the Śukranītisāra II. 71-72 where almost the same eight are said to be the ministers according to some. Vide also Grant Duff's History of the Marathas, vol. I. p. 193, and Rao Bahadur Wad's selections of *sanads* and letters (in Marathi) published by Messrs. Mawajee and Parasnis in 1913, where the names of the eight ministers of Shivaji are stated and their duties are described (p. 123). In the Śāntiparva (85. 7-9) it is declared that the king should have 37 sacivas, of whom 4 should be learned and bold brāhmaṇas, 8 valiant kṣatriyas, 21 prosperous vaiśyas, 3 śūdras and one *sūta* versed in the Purāṇas, but verse 11 adds that the king should discuss and settle lines of policy in the midst of eight mantrins and Śānti 83. 47 says that mantrins should not be less than three. In the Rāmāyaṇa (II. 100. 71) Rāma whom Bharata came to meet in the former's exile asks him whether he held consultation with three or four mantrins and (in verse 18 = Sabhāparva 5. 30) Rāma hopes

that Bharata did not settle his policies by himself alone or in consultation with too many ministers. Kauṭilya also (I. 15) lays down that the king should hold consultation with three or four mantrins. The Nītivākyāmṛta (mantrisamuddeśa pp. 127–128) holds that they should be three, five or seven, that unanimity is difficult to secure in a group of persons of different characters and that when there are many ministers they are jealous and try to carry out their own ideas. These passages show that firstly there was to be a small cabinet of three or four ministers, secondly there was to be a council (*pariṣad*) of ministers who might be eight or more in number according to requirements and thirdly there was a large number of amātyās or sacivas (high functionaries concerned with various departments). The council is mentioned in the 3rd and 6th Rock Edicts of Aśoka (Corpus I. I. vol. I. p. 4 'parisā pi yute ājñāpayisati') in the words 'the council will order the officers called Yuktas'. The qualifications of ministers (amātyas) are laid down in several places e. g. in Kauṭilya I. 9, Manu VII. 54, Yāj. I. 312, Kām. IV. 25–30 (of which verses 28–30 are almost the same as the words of Kauṭilya), Śānti 118. 2–3 (14 qualities of mantrins are mentioned), Śānti 80. 25–28, Bālakāṇḍa 7. 7–14, Ayodhyākāṇḍa 100. 15, Medhātithi on Manu VII. 54, Agnipurāṇa 239. 11–15 (= Kam. IV. 25 and 28–31), Mānasollāsa II. 2, verses 52–59, Nītivākyāmṛta p. 108, Rājanītiratnākara pp. 13–14 (quoting Nārada and Hārīta), Rājanītiprakāśa pp. 174–178, Rājadharmakaustubha pp. 251–254, Budhabhūṣaṇa pp. 32, 57–58. Only the qualities required by Kauṭilya in amātya are set out here: He must be a native of the country, born of high family, influential, well-trained in arts, far-sighted, wise, of good memory, vigilant, eloquent, bold, intelligent, endowed with enthusiasm and dignity, capable of endurance, pure (in mind and actions), well-disposed, firmly devoted (to the king), endowed with character, strength, health, spiritedness, free from arrogance and fickleness, affectionate, who would not have recourse to hatred (even when offended by the king). Kauṭilya states that amātyas are of three kinds, the best, middling and inferior, of which the first must be endowed in full with the qualities set out by him and the other two are deficient by one quarter and a half respectively. In Śānti 83. 35–40 the faults that disqualify a person for being a mantrin are stated and verses 41–46 set out the qualifications for a mantrin, one of which deserves special notice, viz. (verse 46) he should have secured the confidence of the pauras and jānapadas. Many works prescribe that the ministers were

to be hereditary if the son was capable like his father, e. g. Manu VII. 54, Yāj. I. 312, Rāmāyaṇa II. 100. 26 (=Sabhāparva 5. 43), Agni. 220. 16–17, Śukra II. 114. The Matsya 215. 83–84 and Agnipurāṇa (220. 16–17) add the very sensible remark that such hereditary ministers should not be allowed to dispose of the cases of their *dāyādas* (agnates). The Viṣṇudharmottara (II. 24. 55–56) contains the same rule. This hereditary character is borne out by many inscriptions. For example, in the Allahabad stone pillar ins. of Samudragupta, Hariṣeṇa is himself a Mahādaṇḍa-nāyaka whose father Dhruvabhūti was also a Mahādaṇḍa-nāyaka (Gupta Inscriptions pp. 10, 15) and in the Udayagiri cave Inscription of Candragupta II (ibid p. 34) Vīrasena is described as 'anvayaprāptasācivya' (who hereditarily obtained the post of *saciva*). The R. N. P. (p. 176) after quoting the Matsyapurāṇa expressly states that the hereditary principle was to be given up, if the son or grandson of a former minister had not the requisite qualifications, but that such a descendant was to be employed only in such state work as was suited to his[137] attainments. The mantrins should, according to most authorities, be chosen from among brāhmaṇas, kṣatriyas and vaiśyas, but not from śūdras, even if the latter be endowed with qualities (vide Śukra II. 426–427, Nītivākyāmṛta p. 108).[137a] The consultation with the council of ministers was to be in secret. Kauṭilya (I. 15) says 'All administrative undertakings must be preceded by consultation with ministers. The place for consultation should be so secluded that the conversation going on inside will not be heard outside and that even birds cannot see it, for it is narrated that secret consultations were divulged by parrots, *mainas*, dogs and other lower animals'.[138] The Harṣacarita VI states that Nāgasena of the Nāga dynasty met destruction in Padmāvatī because his secret policy was divulged

137. मत्स्यपुराणेपि। गुणहीनानपि तथा विज्ञाय नृपतिः स्वयम्। कर्मस्वेव नियुञ्जीत यथायोग्येषु भागशः॥ अत्रायं वाक्यार्थः। यदि मौलाः कुलीना अपि तथा पितृपैतामहपदयोग्यगुणहीनास्तांस्तथाविधगुणहीनानपि विज्ञाय यथायोग्येष्वेव कर्मसु स्वयं भागशः कर्मविभागेन नियुञ्जीत न तु तत्तत्पितृपैतामहपदेषु तत्र तत्र तेषामयोग्यत्वात्। रा. नी. प्र. p. 176.

137a. ब्राह्मणक्षत्रियविशामेकतमं स्वदेशजमाचाराभिजनविशुद्धमव्यसनिनमव्यभिचारिणमधीताखिलव्यवहारतन्त्रमस्त्रज्ञमशेषोपाधिविशुद्धं च मन्त्रिणं कुर्वीत। समस्तपक्षपातेषु स्वदेशपक्षपातो महान्। नीतिवाक्या० p. 108.

138. मन्त्रपूर्वाः सर्वारम्भाः। तदुद्देशः संवृतः कथानामनिःश्रावी पक्षिभिरनालोक्यः स्यात्। श्रूयते हि शुकसारिकाभिः मन्त्रो भिन्नः श्वभिरन्यैश्च तिर्यग्योनिभिः। अर्थशास्त्र I. 15; compare हर्षचरित VI 'नागकुलजन्मनः सारिकाश्रावितमन्त्रस्यासीन्नाशो नागसेनस्य पद्मावत्याम्। शुकश्रुतरहस्यस्य च श्रीरशीर्यत श्रुतवर्मणः श्रावस्त्याम्।'

by a *mainā*, Śrutavarman lost his kingdom in Śrāvastī as his secret was disclosed by a parrot, and king Suvarṇacūḍa met his death in Mṛttikāvatī by babbling in a dream about his policy. Vide also Manu VII. 147–150, Yāj. I. 344, Kām. XI. 53, 65–66, Agnipurāṇa 225. 19, Mānasollāsa II. 9, verses 700–705 p. 92. Kauṭ. (I. 15) has a verse 'no outsider should know the king's secret policy which he desires to carry out. Only those who are to carry it out should know it only when it is begun or accomplished'. Vide for a similar rule Manu VII. 105 (=Śānti. 140. 24 which is also the last but one verse in Kauṭ. I. 15).[139] The king presided in the council, but if he was not present the chief minister presided (Manu VII. 141). In the Mālavikāgnimitra (V) the king's decision to make a *dvairājya* is conveyed to the council of ministers and then the amātya (who here means the chief minister or President of the council) informs the king that the council agreed with the king, whereupon the king asks the council to depute the commander-in-chief Vīrasena to carry out the proposal. Kauṭ. further says (I. 15) that all business was to be transacted in the presence of the ministers; but if any one was absent his opinion was to be elicited by despatching a letter. In matters of emergency (or great danger) the king is to call his cabinet ministers and the council of ministers and what the majority decide or what would lead to success is to be carried out by the king. Śukra I. 365 also refers to the view of the majority. It is the duty of the ministers, according to Kām. IV. 41–49, to prevent a king from pursuing an evil course, it is the duty of the king to listen to the advice of his ministers and such ministers are not merely his friends but are really his *gurus*.[140] Śukra (II. 82–83) asks 'How can the kingdom be brought to prosperity by those ministers whom the king is not afraid to offend? They are no better than ladies who are to be decked with ornaments and fine clothes. What is the use of those ministers, whose advice does not tend to the advancement of the kingdom, the people, the army, the treasury, good government and to the destruction

139. नास्य छिद्रं परः पश्येच्छिद्रेषु परमन्वियात् । गूहेत्कूर्म इवाङ्गानि रक्षेद्विवरमात्मनः ॥ शान्ति 83. 49 and शान्ति 140. 24 with slight variations; कौटिल्य reads नास्य गुह्यं परे विद्युश्छिद्रं विद्यात्परस्य च । ... यस्स्याद्विवृतमात्मनः ॥

140. सज्जमानमकार्येषु निरुन्ध्युर्मन्त्रिणो नृपम् । गुरूणामिव चैतेषां शृणुयाद्वचनं नृपः ॥ ...नृपस्य ते हि सुहृदस्त एव गुरवो मताः । य एनमुत्पथगतं वारयन्त्यनिवारिताः ॥ सज्जमानमकार्येषु सुहृदो वारयन्ति ये । सत्यं ते नैव सुहृदो गुरवो गुरवो हि ते ॥ कामन्दक IV. 41, 44–45.

of enemies? The ministers, however, must have found it difficult to please the king and also to placate the subjects. A well-known subhāṣita states that one who looks to the benefit of the king comes to be hated by the people and he who looks to the good of the people (only) is abandoned by the king; when there is this great conflict it is rare to find a person who can secure the aims of both the king and the people.[140a] Manu (VII. 56–59) prescribes the matters in which consultations are to be held with ministers and the procedure thereof, viz. peace and war, *sthāna* (i. e. army, treasury, capital and the country), sources of revenue, protection (of himself and of the country), the proper bestowal of the wealth obtained; the king is to ascertain the opinions of ministers separately and then jointly and then do what is beneficial; he is then to hold consultation on the most important affairs relating to the six means of policy with a wise brāhmaṇa who is the most distinguished of all ministers and always to rely upon him, to settle all lines of policy finally on his advice and then to act. Yāj. I. 312 also requires the king to consult his *mantrins*, then a brāhmaṇa (purohita) and thereafter to decide himself the course of action. The principal matters which mantrins have to concentrate themselves upon, acc. to Kām. XIII. 23–24 (=Agnipurāṇa 241. 16–18), are: *mantra*, securing the fruit of the line of policy adopted (such as conquering a country and protecting it), the carrying out of the business (of the State), predicting the good or evil effects (of an action taken), revenue and expenditure, government (i. e. punishing those who deserve punishment), subduing enemies, measures against calamities like famine, guarding the king and the kingdom.[141] The Nītivākyāmṛta (p. 185) concisely puts the same by saying that amātyas have to concern themselves with revenue, expenditure, guarding the ruler (i. e. his body, his dharma, wife and children), looking after the army in all its arms.

Yāj. I. 343 says 'since the State depends upon *mantra* (i. e. lines of policy arrived at after consultation with ministers), the

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140a. नरपतिहितकर्ता द्वेष्यतां याति लोके जनपदहितकर्ता त्यज्यते पार्थिवेन्द्रैः । इति महति विरोधे वर्तमाने समाने नृपतिजनपदानां दुर्लभः कार्यकर्ता ॥ q. by सुभ. p. 86, last pāda being read as तदुभयहितकर्ता त्यज्यते पार्थिवेन्द्रैः.

141. मन्त्रो मन्त्रफलावाप्तिः कार्यानुष्ठानमायतिः । आयव्ययौ दण्डनीतिरमित्रप्रतिषेधनम् ॥ व्यसनस्य प्रतीकारो राजराज्याभिरक्षणम् । इत्यमात्यस्य कर्मेदं हन्ति स व्यसनान्वितः । कामन्दक XIII. 23–24 and अग्निपुराण 241. 16–18; आयो व्ययः स्वामिरक्षा तन्त्रपोषणं चामात्यानामधिकारः । नीतिवाक्यामृत (अमात्यसमुद्देशः) p. 185.

king should keep his lines of policy secret in such a way that people should not know them till the results of his undertakings manifest themselves'. Kauṭilya (X. 6 last verse) emphasizes the importance of mantra in 'an arrow discharged by an archer may kill one man or none at all, but a (well-considered) scheme put into operation by a wise man may destroy even those who are only conceived'.[142] Both Sabhāparva 5. 27 and Ayodhyā 100. 16 have the same verse, viz. *mantra* is the root of victory.[143] Kauṭilya and the Nītivākyāmṛta p. 114 say that *mantra* accomplishes the following, viz. the apprehension of what is not or cannot be seen, imparting the strength of definite conclusion to what is apprehended, removal of doubt when two courses or opinions are possible, inference of an entire matter when only a part is seen.[144] In most works such as Kauṭ. I. 15, Kām. XI. 56, Agnipurāṇa 241. 4, Pañcatantra I. p. 85, Mānasollāsa (II. 9 verse 697 ff, p. 92) it is said that *mantra* has five elements which have to be considered (it is *pañcāṅga*), viz. means of carrying out actions (or works), plenty of men and materials, proper allotment of time and place, remedies against pitfalls, the (happiness of the kingdom or people) that will result from the accomplishment of the course decided upon.[145]

The high functionaries and office-holders have been different at different times. In the Vedic age, in the performance of the Rājasūya, there are certain offerings (generally twelve in number) which are called 'ratninām havīṃṣi'. Their order and names differ in different texts, though most are the same in all. Besides the king (the sacrificer), the eleven 'ratnas' (jewels) or 'ratnins' are (according to the Śat. Br. V. 3. 2): the commander-in-chief, the *purohita*, the crowned queen, *sūta*, *grāmaṇī*, *kṣattṛ* (chamberlain), *saṅgrahītṛ* (treasurer or charioteer ?),

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142. एकं हन्यान्न वा हन्यादिषुः क्षिप्तो धनुष्मता । प्राज्ञेन तु मतिः क्षिप्ता हन्याद्गर्भगतानपि ॥ अर्थशास्त्र X. 6 last verse, quoted in यशस्तिलक III. p. 386.

143. मन्त्रो विजयमूलं हि राज्ञां भवति राघव । अयोध्या 100. 16; विजयो मन्त्रमूलो हि राज्ञां भवति भारत । सभा 5. 27.

144. अनुपलब्धस्य ज्ञानमुपलब्धस्य निश्चयबलाधानमर्थद्वैधस्य संशयोच्छेदनमेकदेशदृष्टस्य शेषोपलब्धिरिति मन्त्रसाध्यमेतत् । तस्माद् बुद्धिवृद्धैः सार्धमासीत मन्त्रम् । अर्थशास्त्र I, 15 and नीतिवा. p. 114, which reads उपलब्धस्य निश्चयो निश्चितस्य बलाधानम्.

145. कर्मणामारम्भोपायः, पुरुषद्रव्यसम्पत्, देशकालविभागः, विनिपातप्रतीकारः, कार्यसिद्धिरिति पञ्चाङ्गो मन्त्रः । अर्थशास्त्र I. 15; सहायाः साधनोपाया विभागो देशकालयोः । विपत्तेश्च प्रतीकारो मन्त्रः पञ्चाङ्ग इष्यते । कामन्दक XI. 56. It will be noticed that Kām. omits कार्यसिद्धिः and makes up the five by counting देशविभाग and कालविभाग separately.

akṣāvāpa (superintendent of gambling ,or of the records ?), bhāgadugha (collector of taxes), govikartana (? hunter), dūta (courier), parivṛkti (discarded queen). Vide H. Dh. vol. II. p. 1215 n and 1216. In Tai. Br. (I. 7. 3) they are the same as above except that govikartana is omitted and the queen called ' vāvātā ' is added. These are described in the Tai. Br. I. 7. 3 as the bestowers of the kingdom (ete vai rāṣṭrasya pradātāraḥ). Vide also Tai. S. I. 8. 9. 1–2. It is clear from Śat. Br. V. 3. 2. 2 and 4 that some of these jewels like the commander-in-chief and the huntsman were of low caste or of the śūdra caste. Later on certain functionaries began to be called *tīrthas*, their number being 18 ; vide Sabhāparva 5. 38 (=Ayodhyā 100. 36) and Śānti 69. 52 for a reference to the 18 tīrthas.[146] Kauṭilya (I. 12) speaks of the 18 tīrthas and enumerates them.[147] In the Raghuvaṁśa 17.68 Kālidāsa employs the word tīrtha in this sense. According to the Nītivākyāmṛta (p. 29) persons who are helpers in dharma and state business are called tīrtha. In the Edicts of Aśoka the high officers were called mahāmātras (in Rock Edict XII there are dharma-mahāmātras) and other officers were yuktas, rājukas and prādeśikas (in Rock Edict III) of whom the first at least were subordinate to the council of ministers. Later writers like Govindarāja on Ayodhyā 100. 36, the com.

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146. कच्चिद्दृष्टादशान्येषु स्वपक्षे दश पञ्च च । त्रिभिस्त्रिभिरविज्ञातैर्वेत्सि तीर्थानि चारकैः ॥ अयोध्या 100. 36 = सभापर्व 5. 38 = नीतिप्रकाशिका 1. 52.

147. तान्राजा स्वविषये मन्त्रि-पुरोहित-सेनापति-युवराज-दौवारिकान्तर्वंशिक-प्रशास्तृ-समाहर्तृ-संनिधातृ-प्रदेष्टृनायक-पौरव्यावहारिक-कार्मान्तिक-मन्त्रिपरिषदध्यक्ष-दण्डदुर्गान्तपालाटविकेषु श्रद्धेयदेशवेषशिल्पभाषाभिजनापदेशान् भक्तितः सामर्थ्ययोगाच्चापसर्पयेत् ।... एवं शत्रौ च मित्रे च मध्यमे चावपेच्चरान् । उदासीने च तेषां च तीर्थेष्वष्टादशस्वपि ॥ अर्थशास्त्र I. 12. दौवारिक is lit. doorkeeper i. e. Lord Mayor of the palace ; आन्तर्वंशिक is Lord Chamberlain (the same as स्त्र्यध्यक्ष or कलत्राध्यक्ष in Āśvamedhikaparva 22. 20 and Śalya 29. 72 and 94 and the स्त्र्यध्यक्षमहामात्र in the 12th Rock Edict at Girnar or Mansehra in Corpus I. I. p. 80 ; and the अन्तःपुराध्यक्ष in मत्स्यपुराण 215. 42). प्रशास्तृ is probably Chief Magistrate. समाहर्तृ is the minister or the Chief Commissioner of Revenue. संनिधातृ is the minister in charge of the Treasury, प्रदेष्टृ functions are not known, नायक is probably नगराध्यक्ष. पौरव्यावहारिक is the Chief Justice whose court was in the capital. कार्मान्तिक was superintendent of all mines and State manufactories, दण्डपाल was officer in charge of all branches of the army, दुर्गपाल (= राष्ट्रपाल) officer in charge of all forts, अन्तपाल officer in charge of all frontiers, आटविक superintendent of forests and forest tribes. It is possible to regard प्रदेष्टृनायक as one word meaning the chief of pradeṣṭṛs (they were many, acc. to Kauṭilya V. 2) and to take Paura as equal to the Nāgaraka i. e. capital Superintendent (vide Arthaśāstra II. 36) and Vyāvahārika as Chief Justice. For गोविकर्तन see विराट 2. 7. (cr. ed.).

on the Yaśastilaka I. p. 91 differ as to the names of these 18.[148] The Rājataraṅgiṇī I. 120 informs us that in former times there were only seven departments (*karmasthānas*), that later on they became 18 and that five more were added to these eighteen (IV. 142–143 and 512) viz. mahāpratīhāra, mahāsāndhivigraha, mahāśvaśāla, mahābhāṇḍāgāra, mahāsādhanabhāga (and so the Heads were called 'adhigata-pañcamahāśabda' i. e. to whom five titles with 'mahā' in them were given).[149] The Agnipurāṇa 220 mentions several high functionaries like the senāpati, pratihāra, dūta and heads of departments. The Śukranītisāra (II. 69–70) enumerates ten principal high functionaries of the king (prakṛtis) viz. purodhas (purohita), pratinidhi, pradhāna (President of council), saciva (war minister), mantrin (Home minister), prāḍvivāka (minister of justice), paṇḍita (minister of ecclesiastical matters), sumantra (Finance minister), amātya (revenue minister) and dūta (minister of diplomatic relations) and remarks that others omitted purodhas and dūta from this list of ten and held that these eight should all receive the same pay (verses 71–72), while Śukra was of opinion that the ten high dignitaries should each receive in order one tenth more as pay than the succeeding one (v. 71), that the purohita was the most eminent of all, that among the rest each preceding was more eminent than each succeeding one (II. 74–77), that after these high dignitaries came the other officers (adhikārigaṇa, II. 279), that then came the darśaka (secretary ?), and lekhaka (clerk), then the menial servants who waited on the king and lastly the lowest were those who carried out dirty work. In II. 84–87 Śukra briefly brings out the special functions of the

148. उक्तं च । सेनापतिर्गणको राजश्रेष्ठी दण्डाधिपो मन्त्री महत्तरो बलवत्तरश्चत्वारो वर्णाश्चतुरङ्गबलं पुरोहितोऽमात्यो महामात्यश्चेत्यष्टादश राज्ञां तीर्थानि भवन्ति । com. on यशस्तिलक I. p. 91 ; धर्मसमवायिनः कार्यसमवायिनश्च पुरुषास्तीर्थम् । नीतिवा. p. 29 (अर्थसमुद्देश).

149. This is a meaning of *pañcamahāśabda* which is peculiar to the Rājataraṅgiṇī. Elsewhere that title generally means one before whom were beaten the five musical instruments. In the Talcher grant of Kulastambha in the 9th century the epithet 'samadhigata-pañcamahāśabda' is applied to a king (mahārājādhirāja) in E. I. vol. XII p. 157, while in an Inscription from Yewur of about 1040 A. D. it is applied to a mahāmaṇḍaleśvara (E. I. vol. XII, p. 269). In the Pimpari plates of Dhārāvarṣa Dhruvarāja dated Śake 697 the same title is applied to a minister described as महासन्धिविग्रहाधिकृतसामन्त (E. I. vol. X, p. 89). Vide J B B R A S (New series) vol. I pp. 238–245, VII. 487, VIII. 93 for discussion.

ministers from pratinidhi to dūta [150] and then in II. 88-105 at length. In I. 353-361 Śukra lays down how the king's public *durbar* should be arranged, viz. the king's throne should be in the centre of the western half of the hall on which the king should sit well-dressed, wearing his crown, armour and a drawn sword; his sons, grandsons, brother's and sister's sons should sit behind him, his daughter's sons should sit on his right and on his left should sit in order his uncles, chief agnates, members of the assembly, commanders; in front of the king to his right should be seated his maternal grandfather's relatives, the mantrins, and to the left his father-in-law, wife's brother, officers &c. The Śukranītisāra (I. 374-376) lays down certain very practical rules for the king: 'he should personally observe villages, towns and districts every year; he should see whether his subjects are kept contented or are harassed by his officers, he should not side with the officers (with the man on the spot) but rather should take the side of the subjects, he should remove an officer who is hateful to many (lit. a hundred) people and an *amātya* should be removed if he is found to commit several illegal acts. Śukra (in II. 107-113) further advises the change of portfolios among the ministers (e. g. sumantra should be appointed amātya or *vice versa*); he says that for each department three should be engaged, one the most clever being the head and two others being darśakas (secretaries) who should be changed every three, five, seven or ten years; one man should not be allowed to hold the same high office for a long time, since otherwise he becomes intoxicated with power; [151] servants should not do any business without a written order nor should a king order anything to be done except in writing (II. 290).

The words in Aśoka's Edict III 'pañcasu pañcasu vāsesu niyātu' probably refer to the practice of the transfer of high

150. कार्याकार्यप्रविज्ञाता स्मृतः प्रतिनिधिस्तु सः । सर्वदर्शी प्रधानस्तु सेनावित् सचिवस्तथा ॥ मन्त्री तु नीतिकुशलः पण्डितो धर्मतत्त्ववित् । लोकशास्त्रनयज्ञस्तु प्राड्विवाकः स्मृतः सदा ॥ देशकालप्रविज्ञाता ह्यमात्य इति कथ्यते । आयव्ययप्रविज्ञाता सुमन्त्रः स च कीर्तितः ॥ शुक्रनीति II. 84-86.

151. Compare what Kauṭilya says 'बलं हि चित्तं विकरोति' (VII. 14 p. 305). That power corrupts is forcibly stated by Plato in his 'Laws' Book IV p. 485 (Random House ed.) 'Chronos knew that no human nature invested with supreme power is able to order human affairs and not overflow with insolence and wrong'.

officers every five years. The 6th caste mentioned by Megasthenes (Fragment 1 p. 41 and Fragment XXXIII p. 85 in McCrindle's 'Ancient India') was that of overseers who inquired into and superintended all that went on in India, and made reports to the king or, where there was no king, to the magistrate. Megasthenes probably confounded the ministers and adhyakṣas (who were often hereditary) with a caste. Vide also Fragment XXXIV pp. 86-88 about the officers of state and their duties. It is probably on account of some such rule as is stated in Śukra about frequent change of portfolios that in the inscriptions high functionaries have epithets prefixed to them which indicate their connection with several portfolios e. g. in the Banskhera plate of Emperor Harṣa (E. I. vol. IV p. 208 at p. 211) Skandagupta (who is probably the same as the Skandagupta mentioned by Bāṇa in the Harṣacarita VI as commander of the elephant arm) was the *dūtaka* of the grant and is described as 'mahāpramātāra-mahāsāmanta'; in the Allahabad stone pillar Ins. of Emperor Samudragupta (Gupta Inscriptions p. 10 and p. 15 n. 4), Hariṣeṇa is described as 'Sāndhivigrahika' (minister for peace and war), 'Kumārāmātya' (the minister of the Yuvarāja?) and Mahā-daṇḍa-nāyaka[152] (commander of an army); Pṛthviṣeṇa (a brāhmaṇa) is described as mantrin, kumārāmātya and then mahābalādhikṛta (in E. I. vol. X p. 72, of Gupta Saṁvat 117). In theory and practice the king was to issue orders in the presence or under the advice of his principal ministers. We read in the grant of Rājarāja I of the Eastern Cālukya dynasty that he issued his command in the presence of the mantrin, purohita, senāpati, yuvarāja, dauvārika and pradhāna (E. I. vol. IV. p. 300 at p. 302). Śukra (II. 362-370) describes the procedure followed in issuing orders about State business. First the mantrin, prāḍvivāka (Chief Judge), paṇḍita (head of ecclesiastical department), and dūta should write out the business relating to their departments, then the amātya should write thereon (*sādhu likhanam-asti*, the writing is good), sumantra adds '*samyag vicāritam*' (it is well considered), the pradhāna writes 'satyaṁ yathārtham' (it is the truth, it is as the business requires), pratinidhi should write 'aṅgīkartuṁ yogyaṁ' (it is proper to accept this), the yuvarāja should write 'aṅgīkartavyam' (it should be accepted), the purohita should write 'lekhyam svā-

152. 'Mahādaṇḍanāyaka' may mean 'the chief minister' as Manu VII. 65 states 'on the amātya depends the control (of the government) and discipline (among subjects) depends on control (daṇḍa).'

bhimatam ' (this writing is approved by 'me) ; all then should make their seals after their remarks and then the king should write ' aṅgīkṛtam '[153] (it is accepted) and affix his seal.

The Rājataraṅgiṇī shows that persons often rose to ministerial positions from low birth e. g. (V. 73) it states that an engineer of Avantivarman was a foundling, (VII. 207) a watchman became chief minister.

It is necessary to say a few words about some of the great officers of State. First comes the Yuvarāja. Kauṭilya devotes one chapter (I. 17) to taking care of the prince. The subjects of the prince's education, his association with state business, treatment of princes, good or bad, the coronation of a yuvarāja have already been dealt with (pp. 49, 83 &c.). The younger brother or eldest son was made yuvarāja (Crown Prince) during the reigning king's life (Ayodhyā, chap. 3–6, Kām. VII. 6, Śukra II. 14–16). Rāma on his coronation as king made Bharata the Crown Prince when Lakṣmaṇa refused to be so (Yuddha 131. 93). The yuvarāja and princes were often sent as governors of different parts of the realm. The Divyāvadāna (XXVI. p. 371) states that Aśoka was sent by his father Bindusāra to Takṣaśilā to pacify popular disturbances and Emperor Aśoka himself is said to have sent his son Kunāla from Pāṭaliputra to the same town to pacify the citizens that had been offended by the arrogance of the *amātyas* (*ibid.* pp. 407–8). Khāravela in the Hāthigumphā Ins. (E. I. vol. XX at pp. 79, 86) was a yuvarāja for nine years from his 16th to his 24th year. From the Mālavikāgnimitra we learn that while Puṣyamitra was virtual emperor of Bharatavarṣa his son Agnimitra was ruling at Vidiśā and had the authority to divide the kingdom of Berar between two brothers, Yajñasena and Mādhavasena. The yuvarāja is not generally enumerated in the lists of mantrins, but he is one of the 18 tīrthas and from Śukra (above p. 115) it appears that he had a seal and important matters passed through his hands along with those of the ministers. According[154] to

153. Compare the word 'dṛṣṭam' occurring at the beginning of Chammak and Sivani grants of the Vākāṭaka emperor Pravarasena II and the same word in the plate of the Pallava king Śivaskandavarman (in E. I. vol. I. at p. 9). In most plates of the Vākāṭakas the word 'dṛṣṭam' occurs at the beginning ; vide E. I. vol. 22 p. 167.

154. जीवन्सन् स्वामिता पुत्रे न देयाद्यखिला क्वचित् । स्वभावसद्गुणे यस्मान्महार्थमदावहा ॥ विष्ण्वाद्यैरपि नो दत्ता स्वपुत्रे स्वाधिकारता । स्वायुषः स्वल्पशेषे तु सत्पुत्रे स्वाम्यमाविशेत् ॥ शुक्रनीति॰ V. 17–18.

Śukra (II. 12) the yuvarāja and the group of amātyas are the two arms or eyes of the king, but Śukra V. 17 warns the king against transferring all power to the Crown Prince except when the king is about to die. The Matsyapurāṇa 220. 7 quoted in the Budhabhūṣaṇa (p. 33) prescribes that the king should entrust to the well-disciplined prince at first unimportant offices and then gradually important ones.[155] If a prince was ill-behaved he was not to be abandoned as he would go over to the enemies and harm the king, but he should be kept confined in a guarded place (Kām. VII. 6, Budhabhūṣana pp. 33, 35, verses 77, 93). As regards his emoluments he was placed on the same footing as the mantrin, purohita, senāpati, the queen, the king's mother (Kauṭ. V. 3). What office is meant by the Kumārāmātya in some of the Inscriptions (e. g. Gupta Ins. pp. 10, 50, E. I. vol. X p. 72, E. I. vol. XI. p. 83) is not clear. It does not probably mean 'a royal prince who was also an amātya', but rather some minister attached to the yuvarāja, as contradistinguished from rājāmātya (which office occurs in Gupta Inscriptions, p. 218). It appears that in ancient times provincial governors could be total strangers to the royal family. From Rudradāman's Junāgadh Ins. we learn that the governor of Surāṣṭra under Candragupta Maurya was a vaiśya called Puṣyagupta and under Aśoka a *Yavana* noble or king called Tuṣāspa[155a] (E. I. VIII p. 36 at p. 43).

Next comes the *purohita*. In H. Dh. vol. II pp. 40 and 363 it has been already shown how purohitas existed from the most ancient period of the Ṛgveda, how the purohita was thought to be half the soul of the king and how the co-operation of the spiritual teacher and the secular head (the king) was deemed absolutely necessary for the prosperity of the kingdom, how Gautama (XI. 12–14) and Āp. Dh. S. II. 5. 10. 16 prescribed the qualities of the purohita. Our authorities show that the purohita was not a mere priest. The Ait. Br. (40. 2) calls the purohita 'rāṣṭragopa' (the saviour of the kingdom). The Śukranīti also,

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155. अधिकारेषु सर्वेषु विनीतं विनियोजयेत् । आदौ स्वल्पे ततः पश्चात्क्रमेणाथ महत्स्वपि ॥ मत्स्य 220. 7, बुध. p. 33

155a. It is strange that Dr. Beni Prasad in 'The State in ancient India' (p. 189) remarks "the former governor is designated *rāṣṭriya* while the latter is called *adhiṣṭhāya*". 'Adhiṣṭhāya' in Rudradāman's Ins. is only a gerund of 'sthā' with 'adhi' and means 'having ruled over'. राष्ट्रिय is formed from राष्ट्र according to राष्ट्रावारपाराद् घखौ (Pāṇ. IV. 2. 93) and means 'one ruling over a province, a Provincial Governor'. In dramas राष्ट्रिय means 'king's brother-in-law'. Kṣīrasvāmī says 'नाट्याद्न्यत्र राष्ट्राधिकृतो राष्ट्रियः'.

though a very late work, similarly describes the purohita (II. 74) as 'rājarāṣṭrabhṛt' (the supporter of the king and the kingdom). In the Ṛgveda III. 53. 12 we find the idea that the hymns and the spiritual power of the purohita Viśvāmitra protected the Bharata clan.[156] He made the king ready for battle and accompanied him in battle murmuring 'where the arrows fly &c'. (Ṛg. VI. 75. 17) while the fight went on (vide Āśv. Gr. III. 12. 19 quoted below n. 308). The Viṣṇudharmasūtra III. 70, Yāj. I. 313, Kām. IV. 32 require that the purohita was to be well versed[157] in the vedas, itihāsa, dharmaśāstra or daṇḍa-nīti, in astrology and portents, in rites of propitiation contained in the Atharvaveda, of high family, endowed with all *vidyās* and good acts as stated in the śāstras and with austerities. Kauṭ. (I. 9) states almost the same qualifications for the purohita, requires the king to honour his advice as a pupil honours his teacher or a son his father or a servant his master and says that royal power advanced by brāhmaṇas, enforced as with a spell by the consultations of mantrins and endowed as with a weapon by the observance of śāstric rules becomes invincible and secures success. Vide Ādi. 170. 74–75, 174. 14–15, Śānti. 72. 2–18 and chap. 73, Rājanītiprakāśa pp. 59–61 and 136–137, Rāja-dharma-kaustubha pp. 255–257 for qualifications expected in the purohita. Kauṭilya (X. 3) states that while a battle is going on the (chief) minister and purohita should urge on and encourage the soldiers by exhorting them with verses from the Veda and classical Sanskrit, promising great rewards in the next world for those who fall in battle. The Śukranītisāra (II. 78–80) requires in the purohita among other qualities the study of dhanurveda, proficiency in arms and in formations of armies for battle and possession of so much religious merit as to be able to pronounce an effective curse. A purohita was to be distinguished from a *ṛtvij* (a sacrificial priest) as Manu VII. 78 and Yāj. I. 314 show. Vide Mānasollāsa II. 2. 60 (p. 34), Rājanītiratnākara pp. 16–17, Viṣṇudharmottara II. 5., Agni 239. 16–17 for further passages on purohita. Some authorities include

156. विश्वामित्रस्य रक्षति ब्रह्मेदं भारतं जनम् । ऋ. III. 53. 12.

157. वेदेतिहासधर्मशास्त्रार्थकुशलं कुलीनमव्यङ्गं तपस्विनं पुरोहितं च वरयेत् । विष्णुधर्मसूत्र III. 70; पुरोहितं प्रकुर्वीत दैवज्ञमुदितोदितम् । दण्डनीत्यां च कुशलमथर्वाङ्गिरसे तथा ॥ याज्ञ. I. 313; पुरोहितमुदितोदितकुलशीलं षडङ्गे वेदे दैवे निमित्ते दण्डनीत्यां चाभिविनीतमापदां दैवमानुषीणामथर्वभिरुपायैश्च प्रतिकर्तारं कुर्वीत । तमाचार्यं शिष्यः पितरं पुत्रो भृत्यः स्वामिनमिव चानुवर्तेत । ... ... ब्राह्मणेनैधितं क्षत्रं मन्त्रिमन्त्राभिमन्त्रितम् । जयत्यजितमत्यन्तं शास्त्रानुगमशस्त्रितम् ॥ कौटिल्य I. 9; राजा पुरोहितं कुर्याद्वृतं ब्राह्मणं हितम् । कृताध्ययनसंपन्नमलुब्धं सत्यवादिनम् ॥ कात्या. q. in स. वि. p. 20.

the purohita among amātyas or mantrins (e. g. Vijñāneśvara on Yāj. I. 353, Śukra II. 69-70), while others like Yāj. I. 312 regard him as distinct from mantrins. The purohita was often hereditary. Acc. to Kauṭilya quoted above he was to employ means declared in the Atharvaveda to remove calamities, divine and human. The great divine calamities acc. to Kauṭilya IV. 3 are fire, flood, disease, famine, rats, wild elephants, snakes and evil spirits.[158] According to Manu VII. 78 the purohita was concerned with the religious rites laid down in the śrauta and gṛhya sūtras and Āp. II. 5. 10. 14-17 show that the purohita had complete jurisdiction in matters of penance for offences. Vas. (19. 40-42) provides that if the king lets off an offender deserving to be punished the king had to fast for a day and the purohita for three days and to perform the heavy penance of Kṛcchra if the king punished the innocent. According to most authorities he played a role that was pre-eminently religious. He is not mentioned among the 10 limbs of the sabhā in the administration of justice. Kāt. 24 (quoted in S. V. p. 20) does not require him to be an expert in arthaśāstra, though Kāt. 56 quoted by the Mit. on Yāj. II. 2 and Sm. C. (II. p. 14) say that the king should enter the Hall of Justice with learned brāhmaṇas, the ministers, the chief justice, the purohita &c. Yāj. I. 312 and the Mit. on Yāj. I. 312-313 on the other hand prescribe that even after consulting all mantrins, the king was finally to consult the purohita in all secular and religious matters. The Nītivākyāmṛta (purohitasamuddeśa) p. 160 states that the divine calamities are : shower of fire (fall of lightning ?), excessive rainfall, epidemics, famine, damage or disease of crops, swarms of locusts and other vermin, diseases, goblins and female evil spirits, snakes, wild elephants, rats. The purohita is required to know ritual of five kinds,[159] viz. that dealing with the propitiation of Nakṣatras, that of śrauta sacrifices, that of the *saṁhitās* (of Tantra worship), that of Atharvaśiras and that of

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158. दैवान्यष्टौ महाभयानि-अग्निरुदकं व्याधिर्दुर्भिक्षं मूषिका व्यालाः सर्पा रक्षांसीति। तेभ्यो जनपदं रक्षेत्। अर्थशास्त्र IV. 3; अमानुषोऽग्निर्वर्षमतिवर्षं मरकी (मरको ?) दुर्भिक्षं सस्योपघातो जन्तुसर्गो व्याधिर्भूतपिशाचशाकिनीसर्पव्यालमूषकाश्चेत्यापदः। नीतिवा. p.160.

159. पञ्चकल्पविधानज्ञं वरयेत्तु सुदर्शनम्। नक्षत्रकल्पो वैतानस्तृतीयः संहिताविधिः। चतुर्थः शिरसा कल्पः शान्तिकल्पस्तु पञ्चमः॥ पञ्चकल्पविधानज्ञमाचार्यं प्राप्य भूपतिः। सर्वोत्पातप्रशान्तात्मा भुनक्ति वसुधां चिरम्॥ विष्णुधर्मोत्तर II. 5. 3-5 quoted in राजनीतिकौ. p. 256. शिरस् here seems to mean अथर्वशिरस् which is an Upaniṣad mentioned in Gaut. 19.12, Vas. 28. 14, Viṣṇudharmasūtra 56. 22 among the holy Vedic texts that purify a person of sins. It begins with देवा ह वै स्वर्गं लोकमगमंस्ते देवा रुद्रमपृच्छन्को भवानिति। Vide Muir's Sanskrit Texts vol. IV. p. 356 ff for text (portion) and translation.

śāntis (such as grahaśānti &c.). Calamities, according to Kām. XIII. 20–21, are of two sorts, divine (daiva) and human : there are five kinds of the first viz. fire, flood, disease, famine and epidemic, all of which can be met by human effort and by propitiatory rites, while human calamities should be withstood by constant effort and by proper lines of policy. The same verses are Agnipurāṇa 241. 14–16.

Acc. to Kauṭilya (V.3) 48000 paṇas were the salary of the (royal) sacrificial priest, ācārya (teacher), mantrin, purohita, commander-in-chief, crown prince, the king's mother, the queens and he holds that "with that amount of maintenance they would not yield to temptation or revolt (against the king)".[160] The amātyas, the chief judge and even the purohita could be punished by the king, acc. to Manu, if any of them went wrong (VIII. 335 and IX. 234) and Kauṭ. (IX. 3) prescribes that when the purohita is guilty even of a great offence, the remedy is to imprison him or banish him. Some great ministers, though not exactly purohitas of the king, were learned brāhmaṇas and led simple lives such as Cāṇakya and Mādhava. There is divergence of views about the salaries set out in the Arthaśāstra (V. 3). Jayaswal (in 'Hindu Polity' part II p. 136) holds that the salaries were yearly and the paṇas in which they were paid were silver ones. Prof. Dikshitar (in 'Mauryan Polity' p. 151) holds that the salaries were monthly. Confusion is caused by the fact that there were paṇas of copper, silver and gold. Vide Rājanītiprakāśa p. 294. The Rājataraṅgiṇī VII. 950 speaks of *dīnnāras* of gold, silver and copper. Rao Bahadur K. V. Rangaswami Aiyangar holds that the salaries (in the Arthaśāstra) were monthly and in golden paṇas (in 'Ancient Indian Polity' pp. 44–45). Therefore this matter must be investigated. Manu (VIII. 13) promises that those names of copper, silver and gold coins which are well-known among the people (of its day) for purposes of trade will be described by him. Acc. to Manu VIII. 134 and 136, Viṣṇu Dh. S. IV. 6–10, and Yāj. I. 363–365 five kṛṣṇalas are equal to a māṣa, 16 māṣas are equal to a suvarṇa, 4 suvarṇas (or five acc. to some) are equal to a pala, a karṣa is equal to ¼ of a pala and a piece of copper one-fourth of a pala in weight is called a paṇa, which is the same as kārṣāpaṇa[161] (equal to 80 *raktikās* or

160. ऋत्विगाचार्यमन्त्रिपुरोहितसेनापतियुवराजराजमातृराजमहिष्योऽष्टचत्वारिंशत्साहस्राः । एतावता भरणेनानास्वाद्यत्वमकोपकं चैषां भवति । कौटिल्य V. 3.

161. कर्षसंमितस्ताम्रविकारः पणसंज्ञो भवति कार्षापणसंज्ञकश्च कार्षापणस्तु विज्ञेयस्ताम्रिकः कार्षिकः पणः–इति मनुवचनात् । मिता० on या. I. 365; पणकार्षापणशब्दौ ताम्रचतुर्थांशकर्षस्य ताम्रद्रव्यस्य नामधेयम् । स्मृतिच. (II. p. 99); धान्यमाषा दश सुवर्णमाषकः पञ्च वा गुञ्जाः । ते षोडश सुवर्णः कर्षो वा । चतुःकर्षं पलम् । अर्थशास्त्र II. 19.

guñjā berries). A pala was equal to 320 raktikās. Kauṭ. II.19 says practically the same thing. In Kauṭ. V. 3 the salaries range from 48000 to 60 paṇas from the highest functionaries to the lowest servants. They must all be taken to be for the same period in every case and in the same metal, since Kauṭ. expressly states no different periods and no difference in metal. Ordinarily the words paṇa and kārṣāpaṇa (as stated by Manu VIII. 136 and the Mit. on Yāj. I. 365 and the Śukranīti IV. 1. 116) refer to copper pieces (used as coins) and bearing a stamp. Another table given by Manu VIII. 135–136, Viṣṇu Dh. S. VI. 11–12, Yāj. I. 364 is: 2 raktikās[162] or kṛṣṇalas = one (silver) māṣa, 16 māṣas = one

162. A *raktikā* was found by General Cunningham after many experiments to weigh on an average 1.8 grains (vide his 'Coins of Ancient India' pp. 45–46 and also Rapson's 'Coins' pp. 2–3). So that a silver dharaṇa or purāṇa (of 32 raktikās) should weigh about 57. 6 grains and a copper paṇa (of 80 raktikās) should weigh 144 grains. It appears that the weights of Indian coins in different parts and at different times varied a good deal. Cunningham ('Coins of Ancient India' p. 5) states that gold was cheap in India, being as one to eight rates of silver. But in medieval times i. e. about 1300 A. D. (vide Śukra IV. 2. 92–93) gold was 16 times the price of the same weight of silver, which again was 80 times of the price of the same weight of copper. Though, as stated in note 161 above, a copper paṇa was usually equal to eighty raktikās, a copper paṇa of 100 raktikās (i. e. of 20 māṣas) was known. Nār. (pariśiṣṭa verse 58) speaks of *māṣa* as the 20th part of the kārṣāpaṇa and the Mit. on Yāj. I. 365 and Vy. Nirṇaya p. 207 quote a verse (attributed to Uśanas by Haradatta and Maskarin on Gaut. XII. 19) that a māṣa is a twentieth part of paṇa (माषो विंशतिमो भागः पणस्य परिकीर्तितः). The Agnipurāṇa (227. 2) appears to have known a paṇa of 120 kṛṣṇalas (कृष्णलानां तथा षष्ट्या कर्षार्धं राम कीर्तितम्). The verses in Nār. (pariśiṣṭa 58–60) are ascribed to Kāt. by the Sm. C. II. p. 99 and it is stated by both that those terms are in vogue in Pañcanada (Punjab). When the paṇa of copper was equal to 20 māṣas (and 100 *guñjās*), the copper coin would have been almost of the weight of the modern copper half anna coin. The table given by Nār. (pari. 58–60) is: 4 kākiṇīs = māṣa, 20 māṣas = kārṣāpaṇa (which is the same as Aṇḍikā), 4 kārṣāpaṇas = dhānaka, 12 dhānakas = suvarṇa (also called dīnāra). The table given by Bṛ. (as quoted in Sm. C. II p. 99 and V. R. p. 667) is the same. Bṛ. as quoted by Aparārka p. 832 and V. R. p. 111 employs the word 'nāṇaka' for coin, which word also occurs in the Mṛcchakaṭika and in Yāj. II. 240–241. The Amarakośa states that niṣka and dīnāra are synonyms and also gives other meanings of niṣka. Śabara on Jai. IV. 3.39 gives the striking example 'no one would spend a kārṣāpaṇa for finding out a kākiṇī that he had lost'. The Arthaśāstra II. 12 p. 84 states that the superintendent of the mint should manufacture copper paṇas, half paṇas, kākiṇīs and half kākiṇīs. The Viṣṇu Dh. S. V. 96 refers to a golden

(*Continued on the next page*)

silver purāṇa or dharaṇa; 10 dharaṇas = one (silver) śatamāna. This table was used for silver coins. Thus a dharaṇa would be 1/10th of a *pala* as stated in the Bṛhatsaṁhitā (10. 13 palada-

(*Continued from last page*)

māṣaka. Under the Guptas golden coins are mentioned as dīnāras; vide 'Gupta Inscriptions' p. 29 at p. 31 where there is a gift of 25 dīnāras in the Gupta year 93 and pp. 38, 41, 261 (where it is stated that one *bhikṣu* was to be fed every day throughout the year from the permanent endowment of 12 dīnāras). From the Baigram plate dated Gupta *saṁvat* 128 it appears that one dīnāra was equal to 16 rūpakas (silver coins) in E. I. vol. XXI. p. 80. A Mathurā Ins. of the 28th year of Huviṣka speaks of the deposit of 550 purāṇas (E. I. vol. XXI. p. 55 at 61). Bhāskarācārya (who was born in śake 1036 and wrote his Siddhāntaśiromaṇi in 1072 śake i. e. 1150 A. D.) gives the following table (in Līlāvatī I. 2-4): 20 varāṭakas = kākiṇī, 4 kākiṇīs = paṇa, 16 paṇas = dramma, 16 drammas = niṣka; 2 yavas = guñjā, 3 guñjās = valla (modern Marathi *vāl*), 8 vallas = dharaṇa, 2 dharaṇas = gadyāṇaka; 5 guñjās = māṣa, 16 māṣas = karṣa, 4 karṣas = pala and a karṣa of gold is called Suvarṇa. It will be seen that Nār. and Līlāvatī differ as to काकिणी. Gadyāṇakas of gold are referred to in the Paṭṭadakal pillar Ins. of Kīrtivarman I (754 A. D.), where it is stated that a field of 30 nivartanas was purchased for thirty gadyāṇakas of gold (E. I. vol. III. pp. 6-7). From a verse of the Caturviṁśatimata quoted by the Mit. on Yāj. III. 258 it appears that gadyāṇaka was also a silver coin. From an inscription of Vikramāditya V near Gadag dated *śake* 934 it appears that fines for offences were levied in gadyāṇakas (E. I. vol. XX p. 64). The following works may be consulted for further information on Indian coins viz. Cunningham's 'Coins of Ancient India' (1894), Rapson's 'Indian coins' (1897) in the *Grundriss*, C. J. Brown's 'Coins of India' (in 'the Heritage of India' series, 1922). The Dharmadvaitanirṇaya (pp. 137-139) and the Vaijayantī on Viṣṇu Dh. S. IV. 9 may be consulted for efforts to reconcile the various statements about Suvarṇa, Niṣka &c. For an informing paper on the most ancient *Denarii*, vide Proceedings of the British Academy vol. XVIII pp. 211-266 where it is established that the earliest *denarius* period begins about 187 B. C. Therefore Jolly's assumption (in Recht und Sitte p. 23 followed by Winternitz in 'History of Indian Literature' vol. II. p. 216. n. 4 that all Indian works in which the word dīnāra occurs cannot have been composed before 2nd century A. D. is unwarranted. Prof. Keith (JRAS for 1915 p. 504) does not accept Jolly's assumption. The dīnāra was variously defined. According to Viṣṇugupta quoted in Hemādri's Vratakhaṇḍa, a rūpaka is $\frac{1}{70}$th of suvarṇa and a dīnāra was equal to 28 rūpakas, while acc. to Nār. and Kāt. सुवर्ण and दीनार were synonyms. The Dharmadvaitanirṇaya says that a kārṣāpaṇa (of silver it seems) was equal to eight or ten *dhabbukas*. One of the verses of the Jñāneśvarī (composed in 1290 A. D.) that speaks of gold as पंधरें (15 times in price of the same weight of silver) may be cited here 'पैं भांगार जरी पंधरें। तरी राजधकोर्षी अक्षरें। लाहे (v. l. साहे) तैंचि सरे। जियापरी।' chap. 17 verse 322 (Bhide's and Madgavkar's editions).

śabhāgo dharaṇam). Nārada (pariśiṣṭa 57) expressly states that a silver kārṣāpaṇa is in vogue in the south i. e. a silver paṇa or kārṣāpaṇa was not universal.[163] A golden suvarṇa also comprised 80 guñjas, while the standard silver paṇa was of 32. Rhys Davids (in 'Buddhist India' p. 100) states that about the time of Buddha's birth transactions were carried on in terms of the *kahāpaṇa*, a square copper coin weighing about 144 grains and guaranteed as to weight and fineness by punch marks made by private individuals, that there were half and quarter kahāpaṇas also, that a kahāpaṇa would be now worth about ⅗ths of a penny, though its purchasing power was then equal to about one shilling of the present day. Therefore it is proper to understand that a paṇa or kārṣāpaṇa, when the word is used without any qualification, was meant to be one of copper and that *prima facie* the salaries in Kauṭilya were meant to be in copper paṇas. This conclusion can be supported by various considerations. Manu VII. 126 prescribes that the wages for the lowest menial servant (such as one who sweeps the house or brings water) is one paṇa a day and of a superior menial servant 6 paṇas a day and that the former was to get in addition one pair of garments every six months and every month a droṇa of corn (which would be equal to 1024 *muṣṭis* according to the Mit. on Yāj. III. 274). Whatever ages may be assigned to the Arthaśāstra and the present Manusmṛti the two works cannot be separated from each other, if at all, by more than a century or two. Therefore the economic conditions of the one may be held to have not differed much from those to which the other refers. It is impossible to hold that the lowest menial servant got one gold paṇa a day besides over 30 *muṣṭis* of corn every day (1024 in a month). If that were so, the lowest menial servants of Kauṭilya's days would have to be supposed to be a hundred times better off than their *confreres* in big cities like Bombay towards the end of the 19th century (when menial servants got from five to ten rupees a *month* without any allowance of grain). Therefore the paṇa in Kauṭilya V. 3 is not of gold. Kauṭilya (in V. 3) says that a king who has a depleted treasury may make payment of salary by giving forest produce, cattle or fields along with small quantities of cash, that if he has undertaken to colonize a waste tract he may make payment of salary in cash only and not by bestowing a village. In connection

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163. कार्षापणो दक्षिणस्यां दिशि रौप्यः प्रवर्तते । नारद (परिशिष्ट 57); दशपणिको योजने दूतो मध्यमः । दशोत्तरे द्विगुणवेतन आ योजनशतादिति । कौटिल्य V. 3.

with this he says that 60 paṇas are to be the equivalent of one āḍhaka of corn (ṣaṣṭivetanasyāḍhakam kṛtvā hiraṇyānurūpam bhaktam kuryāt).[164] An āḍhaka[165] came to only 256 *muṣṭis* (handfuls) of corn and even in famine times one āḍhaka could not have cost 60 silver paṇas, much less golden ones. In V. 3 Kauṭilya declares that an ordinary dūta should get ten *paṇas* for a journey of one *yojana* and twice the wages for each yojana up to one hundred. A yojana acc. to Kauṭ. himself (II. 20) is equal to 8000 *dhanus* (acc. to another reading 4000 *dhanus*), a dhanus being equal to four aratnis (each aratni being 24 aṅgulas). So taking the highest figure a yojana was at the

164. The word hiraṇya has two senses 'gold' and 'money or 'cash' whether in gold, silver or copper (as said by Amara who gives 'draviṇa' as a synonym). When Kauṭilya says that the king may pay 'hiraṇya' and not 'grāma' he means only cash payment and not necessarily only gold; vide the copperplate grant of Śilāditya VII in Gupta Inscriptions p. 179 at p. 189 where the grant of a village is said to be 'sadhānyahiraṇyādeyaḥ'. Here *dhānya* (payment of tax in kind) is contradistinguished from payment in *hiraṇya* i. e. in cash (either gold, silver or copper). When Patañjali states that the Mauryas being greedy of 'hiraṇya' founded or manufactured images (Mahābhāṣya vol. II. p. 429 on Pāṇ. V. 3. 99 quoted in H. Dh. vol. II p. 710 n. 1696) what is meant is that they wanted cash and not merely gold.

165. The measures of capacity such as आढक, प्रस्थ occur in the Mathura Ins. of Huviṣka (E. I. XXI. p. 55 at p. 61). According to Parāśara (VI. 70) two *prasthas* are equal to an āḍhaka and 32 prasthas are equal to a droṇa. The Mit. on Yāj. III. 275 quotes a verse to this effect: 8 muṣṭis = one *kiñcit* or *kuñci* (acc. to some), 8 kiñcit = puṣkala, 4 puṣkalas = āḍhaka; 4 āḍhakas = droṇa and 16 droṇas = khārī. Aparārka (pp. 305 and 846) quotes two verses (which the Par. M. II 1. p. 141 ascribes to the Bhaviṣya-purāṇa) which say: 2 palas = prasṛti, 2 prasṛtis = kuḍava, 4 kuḍavas = prastha, 4 prasthas = āḍhaka, 4 āḍhakas = droṇa, 2 droṇas = kumbha. The Daṇḍa-viveka p. 135 refers to this, adds that some held the kumbha to be equal to 20 droṇas (Kauṭ. II. 20 holds kumbha to be equal to 20 droṇas) and quotes the following verse from चण्डेश्वर 'कुडवाद्या वेदगुणाः प्रस्थाढकद्रोणमानकाः खार्यः । कुम्भो विंशतिखार्यो दृष्टो लोके यथाक्रमशः' ॥. The word droṇa occurs even in the Ṛgveda in the sense of a wooden trough used for holding water or soma juice. Vide Ṛg. VI. 2.8, VI. 37.2, VI. 44.20, IX. 28.4 etc. In Ṛg. IV. 32. 17 the sage prays Indra to grant a hundred khārīs of soma. The words *āḍhaka* and *droṇa* occur in the ardharcādi group (Pāṇ. II. 4. 31), *Khārī* in Pāṇ. V 1. 33 and V. 4. 101. The Par. M. II. 1. 141 says on this difference about kumbha 'देशभेदेन शास्त्रद्वयस्य व्यवस्थापनीयत्वात्' Kauṭ. (II. 19 p. 104) himself tells us that the measure droṇa was of four varieties, 162½ palas, 175, 187½ or 200 palas according as it was used for measurement in the harem, or for servants or for ordinary dealings or for royal income.

most about 9 or 10 miles (or only 4½ or five miles according to the other reading). To hold that 10 silver paṇas were allowed to an ordinary dūta for going even ten miles (which he could cover in half a day or less) would be too much. Hence also the paṇas in Kauṭ. V. 3 are only copper ones. When once it is settled that the paṇas are of copper, it easily follows that the salaries in paṇas were monthly. Artisans and craftsmen were, acc. to Kauṭ., to get 120 paṇas. If this were yearly, they would get only 10 paṇas a month, while, according to Manu quoted above, even the lowest menial was to get a paṇa a day. Therefore 120 paṇas (of copper) were the monthly salary of an artisan. A monthly salary is more natural and practical than a yearly one. Other ancient writers like Śaṅkha-Likhita (in Rājanītiprakāśa p. 252) contemplate a monthly salary for soldiers (viz. two suvarṇas a month).[166] From the Nasik Inscription No. 12 (E. I. Vol. VIII.

166. शङ्खलिखितौ । वाहनयोधानां सततमन्वीक्षणं प्रतिमासं द्विसौवर्णिकी वृत्तिः षाण्मास्यं स्मरणं चातुर्मास्यं वा । स्वर्यातेषु दानमनुक्रोशो विदितेष्वनुप्रदानं कुलचारित्रशील-विद्यालक्षणगुणाधिकेषु संमानं प्रयुञ्जीत । राजधर्मकाण्ड p. 58, राजनीतिप्रकाश p. 252. राजधर्मकाण्ड explains राजकार्येण मृतेषु योधेषु तत्पुत्रादिभ्यो दानं दयया च राज्ञा विधातव्या । प्रसिद्धेषु तु योधेषु दानवेतनादधिकमपि वस्त्रादि देयमित्यर्थः. This provides for pension to the dependents when the soldier dies on duty, special bonuses or favours for special valour, work or worth.

A few words may be said about words like suvarṇa, śatamāna, niṣka &c. The word kṛṣṇala occurs in the Tai. S II. 3. 2 1. Hiraṇyakāra (goldsmith) is found in Vāj. S. 30. 17. In Ṛg. I. 126. 2 gifts of a hundred niṣkas and horses are mentioned and in Ṛg. IV. 37. 4 the Ṛbhus are addressed as wearing ' good niṣkas '. In Atharva V. 14. 3 ' niṣka ' occurs and in the Ait. Br. (39. 8) damsels who are *niṣkakaṇṭhyaḥ* (whose necks are adorned with necklaces of niṣkas) are among the gifts. So ' niṣka ' was probably a gold piece used as a coin or an ornament or a thin plate of gold like a modern *putli*, several of which are even now worn by women in the form of a necklace. In Ṛg. II. 33. 10 Rudra is said to wear ' viśvarūpa-niṣka ' which is probably an allusion to golden pieces stamped with various figures. In Ṛg. VI. 47. 23 the sage says that he received ten 'hiraṇyapiṇḍas' (golden pieces) from Divodāsa. In Ṛg. VIII. 78. 2 a prayer is offered to Indra for the bestowal of golden ' *mana* ', which may be the precursor of ' Śatamāna '. This last occurs in the Tai. S. VI. 6. 10. 2. Pāṇ. (V. 1. 27, 29, 30) respectively mentions śatamāna (what is bought for a śatamāna is called śātamāna), kārṣāpaṇa, niṣka and V. I. 34 refers to paṇa, pāda and māṣa. Patañjali (Mahābhāṣya vol. III. p. 369 on Pāṇ. VIII. 1. 12) gives the instance ' from this kārṣāpaṇa give one māṣa to each of these two persons who are here '. The sūtra of Pāṇini V. 2. 120 (rūpād--āhatapraśastayor-yap) conveys that

(*Continued on next page*)

p. 82) we learn that in the early centuries of the Christian era 35 kārṣāpaṇas were equal to one suvarṇa.

Hopkins in 'Position of the ruling caste' J. A. O. S. vol. XIII. pp. 151-162 traces how the influence of the purohita grew. One cannot accept his views about there being three layers in the Mahābhārata and the conclusions from such dealing with the text that he draws, which are rather subjective. Gradually the importance of the purohita waned. As the Śukranītisāra cited above (n. 150) shows, long before that work he came to be omitted by several writers from the council of ministers and was supplanted by the Paṇḍita. The same functions came to be exercised by an officer called dharmādhyakṣa or dharmādhikaraṇika in Bengal and other countries. The Matsyapurāṇa (215. 24) states the qualifications of a *dharmādhikārin.*[167] Vide E. I. vol. 14 p. 156 at p. 160 of the Naihati grant of Ballālasena, where we have both purohita and mahādharmādhyakṣa mentioned among the great functionaries of State and the Benares copper-plate of the Cedi king Karṇadeva in 1042 A. D. in E. I. vol. II. p. 309 where we have mahādharmādhikaraṇika but no purohita. Besides another officer called sāṁvatsara (astrologer) gradually took over some of the functions of the purohita. The Viṣṇudharmasūtra III. 75 (*rājā ca sarvakāryeṣu sāṁvatsarādhīnaḥ syāt*) requires the king to depend on the sāṁvatsara in all matters. The Bṛhat-saṁhitā (2. 9) states that a king without a sāṁvatsara mistakes his path like a blind man. Kām. 4.33 and Viṣṇudharmottara II. 4. 5-16 recommend reliance on him. Kauṭilya[167a] IX. 4 was himself against too much reliance on astrology, while Yāj. I. 307 holds that the rise and fall of kings depend on the (aspects or influence of) planets.

(*Continued from last page*)

Pāṇini knew metal pieces that were well beaten and trimmed into good-looking coins. The Vārtika 'Kākiṇyāścopasaṅkhyānam' (on Pāṇini V. 1. 33) establishes that kākiṇī was used in those days as a medium of purchasing goods. The Kāśikā gives 'rūpyo dīnāraḥ' as an example: निघातिकाताडनादिना दीनारादिषु रूपं यदुत्पद्यते तदाहतमित्युच्यते। आहतं रूपमस्य रूप्यो दीनारः। रूप्यं कार्षापणम्। काशिका.

167. समः शत्रौ च मित्रे च धर्मशास्त्रविशारदः। विप्रमुख्यः कुलीनश्च धर्माधिकरणी भवेत्॥ मत्स्यपुराण 215. 24 and शुक्र. p. 48 verse 216.

167a. नक्षत्रमतिपृच्छन्तं बालमर्थोऽतिवर्तते। अर्थो ह्यर्थस्य नक्षत्रं किं करिष्यन्ति तारकाः॥ अर्थशास्त्र IX. 4 (last verse but one)

Senāpati: The qualities of a commander-in-chief are stated in several places such as Kauṭilya (II. 33), Ayodhyā 100. 30 (= Sabhā 5. 46), Śānti 85. 31–32, Matsya 215. 8–10, Agnipurāṇa 220. 1 ff, Kām. XVIII. 27–44, Viṣṇudharmottara II. 24. 4–6, Mānasollāsa II. 2, verses 90–92 p. 37. Acc. to the Agnipurāṇa 220. 1, Matsya 215. 10 the commander-in-chief must be either a brāhmaṇa or a kṣatriya. Śukra (II. 429–430) requires that a kṣatriya should be preferred as senāpati, but if a valiant kṣatriya be not available a brāhmaṇa may be chosen, but a śūdra should not be chosen. Acc. to the Mānasollāsa he should possess the following qualities: good family, character, courage, proficiency in (several) languages, cleverness in riding horses and elephants and in the science of arms, knowledge of omens and medicine, knowledge of the breeds of horses and of the difference between what is essential and non-essential, liberality, sweet speech, self-control, intelligence, resoluteness. In the Mahābhārata senāpatis are elected and consecrated (vide Udyoga 151, Droṇa 5, Karṇa 10), but this was not so in later times. He is appointed by the king on his own initiative.

Dūta: (Ambassador or messenger). The word and the office of *dūta* as messenger was known in the most ancient times. In Ṛg. I. 12.1, 1.161.3, VIII. 44.3 Agni is said to be the dūta and is requested to bring the gods to the sacrifice. There is also attached to the word the meaning of espionage, since Saramā, the bitch of the gods, is represented in Ṛg. X. 108. 2–4 as sent by Indra to find out the treasures of the Paṇis. The Udyogaparva (37.27, cr. ed. 37.25) specifies the eight qualities of a dūta viz. he must not be stiff-necked, nor timid, nor dilatory, he must be kind and amiable, not liable to be won over by others, free from diseases, endowed with a fine mode of speech.[168] Śānti 85.28 refers to seven qualities. Vide Ayodhyā 100.35, Manu VII. 63–64, Matsyapurāṇa 215. 12–13 for the qualities of a dūta. The dūta should speak only what he has been ordered (by his king) to speak, otherwise he would be liable to be killed (Udyogaparva 72.7, cr. ed. 70.7). Śānti 85. 26–27 say that the person of the dūta is sacred. Kauṭilya devotes one chapter (I. 16) to the treatment of the subject of dūta. He states that the dūta is to be sent by the king after the line of

168. अस्तब्धमक्लीबमदीर्घसूत्रं सानुक्रोशं श्लक्ष्णमहार्यमन्यैः । अरोगजातीयमुदारवाक्यं दूतं वदन्त्यष्टगुणोपपन्नम् ॥ उद्योगपर्व 37. 27.

policy has been settled at a council of ministers to the king who is to be attacked (vide Kām. XII. 1 also). A dūta is of three kinds : (1) nisṛṣṭārtha[169] (one to whom is entrusted full discretion as to what is to be said) is one who is possessed of the qualifications required in a minister (*amātya*), such as Kṛṣṇa from the Pāṇḍavas or the ambassadors in modern times ; (2) *parimitārtha* (entrusted with a definite mission, an envoy) who possesses the same qualifications as the first less by one quarter ; (3) *śāsanahara* (a mere carrier of royal writings or missives) who possesses only half the qualifications of the first. The Mit. on Yāj. I. 328 lucidly explains the three varieties. Kauṭ. dilates at great length on the qualifications of the dūta, what he has to note while in the enemy country, how he is to behave (such as avoiding women and wine), how he is to gather information through spies ; but all this has to be passed over for want of space. Vide Kām. XII. 2–24 for the same. Kām. (XII. 22–23) briefly sets out the following duties of the dūta ; determining those who are inimical to the king to whom he is sent, winning over to his side the friends and relatives of the enemy king, finding out the (number and equipment of) forts, the economic resources and military strength of the enemy king, collection of news as to what the enemy intends to do, bringing over to his side the officers in charge of the districts of enemy country, collecting knowledge about the places of the enemy where battles can be waged by his king or whence he can pass away swiftly. Manu VII. 65 says that it is the dūta who brings about alliance or war. Kauṭ. says that when the ruler to whom the dūta is accredited becomes displeased at the message he brings, the dūta should reply[170] ' All kings, you and others, speak through their dūta. Therefore dūtas have to deliver the message entrusted to them even if weapons are raised (to threaten them); even the lowest caste dūtas (cāṇḍālas) are not to be killed, what need be said about a dūta who is a

169. उद्धृतमन्त्रो दूतप्रणिधिः। अमात्यसंपदोपेतो निसृष्टार्थः। पादगुणहीनः परिमितार्थः। अर्धगुणहीनः शासनहरः। अर्थशास्त्र I. 16; 'दूताश्च ये प्रकटमेव राजान्तरं प्रति गतागतमाचरन्ति। ते च त्रिविधाः। निसृष्टार्थाः सन्दिष्टार्थाः शासनहराश्चेति। तत्र निसृष्टार्था राजकार्याणि देशकालोचितानि स्वयमेव कथयितुं क्षमाः। उक्तमात्रं ये परस्मै निवेदयन्ति ते सन्दिष्टार्थाः। शासनहरास्तु राजलेखहारिणः। मिता. on याज्ञ. I. 328.

170. तं ब्रूयात् दूतमुखा वै राजानस्त्वं चान्ये च। तस्मादुद्यतेष्वपि शस्त्रेषु यथोक्तं वक्तारस्तेषामन्तावसायिनोऽप्यवध्याः। किमङ्ग पुनर्ब्राह्मणाः। परस्यैतद्वाक्यमेष दूतधर्म इति। अर्थशास्त्र I. 16. Almost these very words occur in नीतिवाक्यामृत (दूतसमुद्देश p. 171) and यशस्तिलक III. p. 564.

brāhmaṇa? This (that I utter) is the message of another. It is my duty to say it'. The Rāmāyaṇa (V. 52. 14–15) says that good men do not allow the killing of a dūta, but certain modes of dealing with him (viz. lashing him, shaving his head) are allowed in certain cases.

A dūta is to be distinguished from a *cara* or *cāra* (spy), as done by Kauṭ., Kām. XII. 32, Yāj. I. 328. Kām. XII. 32 says that a dūta is an open (*prakāśa*) spy, while a *cara* is a spy who works in secret. In modern times also 'an ambassador is often nothing more than an honourable spy acting under the protection of the law of nations' (Encyclopædia Britannica on 'espionage'). Kauṭ. devotes four chapters to spies (I. 11–14) and Kām. (XII. 25–49) also deals at great length with them. The Śukranītisāra (I. 334–336) states that the king should learn every day at night from his secret spies the intentions and actions of his subjects and officers, and the opinions of ministers, enemies, soldiers, the members of the assembly, relations and the women in the harem. The *cara* must, according to Kām. XII. 25, possess ability to infer the inner thoughts (of men), must have a good memory, must be soft in speech, have quick gait, be capable of enduring privations and heavy labour, swift in action, ready-witted. Kauṭ. (I. 11) says[171] that spies are those who work in the guise of a *kāpaṭika* (a bold pupil capable of knowing the minds of others), *udāsthita* (a sham ascetic, who has fallen from the real duties of asceticism and is endowed with intelligence and pure character), *gṛhapatika* (a householder who is a cultivator that has not the means to maintain himself, has intelligence and is of pure character), a *vaidehaka* (a trader who cannot maintain himself by trade and is possessed of intelligence and pure character), a *tāpasa* (a spy practising austerities, who has either shaved his head or has matted hair and is desirous to maintain himself), a class-mate or colleague (*sattrin*), a desperate character (*tīkṣṇa*), a poisoner and a female mendicant. The first five of these are called by Kauṭilya five *saṁsthās* (groups

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171. उपधाभिः शुद्धामात्यवर्गो गूढपुरुषानुत्पादयेत् । कापटिकोदास्थितगृहपतिकवैदेहकतापसव्यञ्जनान् सत्रितीक्ष्णरसदभिक्षुकीश्च । परमर्मज्ञः प्रगल्भः छात्रः कापटिकः । ... प्रव्रज्याप्रत्यवसितः प्रज्ञाशौचयुक्त उदास्थितः । ...... कर्षको वृत्तिक्षीणः प्रज्ञाशौचयुक्तो गृहपतिकव्यञ्जनः । वाणिजको वृत्तिक्षीणः प्रज्ञाशौचयुक्तो वैदेहकव्यञ्जनः । ... मुण्डो जटिलो वा वृत्तिकामस्तापसव्यञ्जनः । ... पूजिताश्चार्थमानाभ्यां राज्ञा राजोपजीविनाम् । जानीयुः शौचमित्येताः पञ्च संस्थाः प्रकीर्तिताः ॥ अर्थशास्त्र I. 11. प्रव्रज्याप्रत्यवसित means the same thing as प्रव्रज्यावसित, which occurs in याज्ञ. II. 183 and is explained by the मिताक्षरा as प्रव्रज्या संन्यासस्ततोऽवसितः प्रच्युतः. मेधातिथि on Manu VII. 154 quotes almost *verbatim* a large part of Kauṭ I. 11 from कापटिको° and a portion from I. 12.

or institutions), which should be honoured by the king with awards of money and marks of respect and through which the king is to test the purity of the character of his servants. Kauṭilya says that the spy called *udāsthita* should carry on agriculture, cattle-rearing and trade on land set apart for the purpose, should be supplied with plenty of gold and disciples and should afford to all (sham) ascetics food, clothing and lodging, direct them to detect particular crimes and report. The spy called *tāpasa* was to stay near the capital, to have many pupils, to pretend to eat once in a month or two only a handful of vegetables or grass and eat secretly his favourite dishes. His disciples were to proclaim that he possessed supernatural powers, he should pretend to make predictions about gain or fires or fear from robbers after ascertaining from his pupils by nods and signs such events. In I. 12 Kauṭ. deals with wandering spies (called *sañcara*) viz. *sattrins* (who are orphans that are to be maintained by the State and that are taught palmistry, sorcery, tricks of legerdemain &c.), *tīkṣṇa* (desperadoes who, regardless of their lives, may fight elephants for money), *rasada* (who have no affection even for their relatives, are indolent and cruel), *bhikṣukī* or *parivrājikā* (a poor brāhmaṇa widow, clever and desirous to earn her livelihood, honoured in the king's harem and visiting the families of mahāmātras or high ministers). These are to spy on the 18 *tīrthas* (mentioned on p. 112 above) in public. For spying on their private character persons pretending to be hump-backed, dwarfs, kirātas (pigmies), the deaf and dumb, idiots, the blind, and others that are actors, dancers, singers and the like and women are to be employed. This information is to be tested by the persons belonging to the five saṁsthās (mentioned above on p. 129), but these are to act without their being known by the wandering spies and *vice versa*. Then further testing by other spies follows. When the information received from these three sources tallies then it will be held reliable: if the information frequently disagrees, the spies should be secretly punished or discharged. A similar rule about sending several spies on the same mission without their knowing each other is laid down by Viṣṇudharmottara II. 24. 66-67. Kauṭ. in I. 13 deals with espionage on subjects in general (i. e. those in the capital and other parts of the country). Spies are to pretend to take sides, some praising the king as possessed of all good qualities, others qualifying that praise. They were also to report the rumours spreading among the people, to report whether there was discontent and the king was to honour those who were reported to be contented and to

bring round the discontented by conciliation, gifts, sowing dissensions among them or by punishing them. In. I. 14 Kauṭilya deals with the employment of spies for taking advantage of parties in a foreign State i. e. groups of persons angry with the foreign king or afraid of him or of persons who are ambitious or proud, who are to be won over by appropriate words and *stimuli.* It will be seen how there was a network of spies of all kinds, so much so that Kām. XII. 28 declares that spies are the king's eyes (*cāracakṣur mahīpateḥ*). The Viṣṇudharmottara II. 24. 63 says the same ('*rājñaś-cāracakṣuṣaḥ* ') and also Udyoga 34. 34 ' *cāraiḥ paśyanti rājānaḥ* '. In IV. 4–6 Kauṭilya dilates[172] upon the employment by the samāhartṛ (Collector) of a host of spies for suppressing those who are thorns (or disturbers of peace), these being employed for detecting judges (dharmastha) and superintendents of various departments that take bribes, counterfeiters of coins, adulterers, thieves and robbers and other criminals. Kauṭilya relies in extreme cases on spies even in the decision of judicial matters. He says (III. 1 last verse) ' when owing to the depositions of witnesses the plaintiff's case and the defendant's case are both destroyed, when the cause of either of the parties is found through the spies to be false, then the decree shall be passed against that party'.[173] In Droṇaparva 75. 4 it is said that Kṛṣṇa had his spies in the army of Duryodhana and *vice versa* (74. 1). Śānti 69. 8–12 and 140. 39–42 mention the places where spies are to be set[174] up and emphasizes that they should not know each ether. One need not feel surprised at the machinery of espionage that Kauṭilya so elaborately describes. All governments in modern times employ spies, informers and secret agents to keep themselves informed of the activities, views and resources of their opponents. We know also how the Indian Police, in order to catch offenders against the Prevention of Gambling Act or other similar Acts, employ agents with marked coins or notes and draw in their not unsuspecting people.

172. समाहर्ता जनपदे सिद्धतापसप्रव्रजितचक्रचरचारणकुहकप्रच्छन्दककार्तान्तिकनैमित्तिकमौहूर्तिकचिकित्सकोन्मत्तमूकबधिरजडान्धवैदेहककारुशिल्पिकुशीलववेशशौण्डिकापूपिकपाक्वमांसिकौदनिकव्यञ्जनान् प्रणिदध्यात् । ते ग्रामाणामध्यक्षाणां च शौचाशौचं विद्युः । अर्थशास्त्र IV. 4. Compare नीतिवाक्यामृत (चारसमुद्देश) p. 172 for a long list of various kinds of people as spies.

173. पूर्वोत्तरार्थव्याघाते साक्षिवक्तव्यकारणे । चारहस्ताच्च निष्पाते प्रदेष्टव्यः पराजयः ॥ अर्थशास्त्र III. 1, last verse.

174. पाषण्डांस्तापसादींश्च परराष्ट्रे निवेशयेत् । उद्यानेषु विहारेषु प्रपास्वावसथेषु च । पानागारे प्रवेशेषु तीर्थेषु च सभासु च । शान्ति 140. 39–42; यथा न विद्युरन्योन्यं प्रणिधेयास्तथा हि ते । शान्ति 69. 10.

CHAPTER V

RĀṢṬRA (THE TERRITORY OF A STATE)

The word 'rāṣṭra' occurs even in the Ṛgveda (IV. 42.1, 'mama dvitā rāṣṭram kṣatriyasya')–'mine is the kingdom on both sides (or in both spheres)' says king Trasadasyu. In Ṛg. VII. 34.11 Varuṇa is praised as the Lord of rāṣṭras (rājā rāṣṭrāṇām &c.). In Ṛg. VII. 84.2 and X. 109. 3 the word rāṣṭra occurs. In a very famous benedictory[175] passage of the Tai. S. VII. 5. 18. 1(= Vāj. S. 22.22) one of the blessings invoked is 'may the king in this kingdom become brave, a skilled archer, and a great warrior'. Vide Tai. Br. III. 8. 13 for explanation of the Tai. S. passage. In the Atharvaveda XII. 1. 8 and 10 the earth is called mother and invoked to impart to the *rāṣṭra* strength and brilliance (or energy). Kām. VI. 3 says[175a] that since all the elements of the State spring from the territory of the State, the king should raise up his territory with all his efforts. The Agnipurāṇa 239. 2 holds that rāṣṭra is the most important of all elements of the State. Manu VII. 69 prescribes that a king should make his home in a country that is not water-logged (i. e. is dry and not moist),[176] is rich in crops, inhabited mostly by Āryas (or well-conducted people), not disturbed (by epidemics &c.), that is charming (owing to trees, flowers and fruits), the chiefs in which have submitted to him and in which livelihood can be had easily. Yāj. I. 321 and Viṣṇudharmasūtra III. 4–5 are to the same effect. Kām. (IV. 50–56) remarks 'the territory of

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175. आ ब्रह्मन् ब्राह्मणो ब्रह्मवर्चसी जायतामास्मिन् राष्ट्रे राजन्य इषव्यः शूरो महारथो जायतां दोग्ध्री धेनुर्वोढानड्वानाशुः सप्तिः पुरन्धिर्योषा जिष्णू रथेष्ठाः सभेयो युवास्य यजमानस्य वीरो जायतां निकामे निकामे नः पर्जन्यो वर्षतु फलिन्यो न ओषधयः पच्यन्तां योगक्षेमो नः कल्पताम् । तै. सं. VII. 5. 18. 1, वाज. सं. 22. 22 (with slight variations).

175a. राज्याङ्गानां च सर्वेषां राष्ट्राद्भवति सम्भवः । तस्मात्सर्वप्रयत्नेन राजा राष्ट्रं समुन्नयेत् ॥ काम. VI. 3. The राज. र. p. 86 ascribes this to शुक्र (and reads the last word as प्रसाधयेत्).

176. अल्पोदकतृणो यस्तु प्रवातः प्रचुरातपः । स ज्ञेयो जाङ्गलो देशो बहुधान्यादिसंयुतः ॥ quoted by कुल्लूक on मनु. VII. 69; स्वल्पवृक्षोदकपर्वतो बहुपक्षिमृगः प्रचुरवर्षातपश्च जाङ्गलो देश इति । quoted by राजनीतिप्रकाश p. 197 from a स्मृति. The मिता० on या. I.321 remarks यद्यप्यल्पोदकतरुपर्वतोद्देशो जाङ्गलस्तथाप्यत्र सजलतरुपर्वतो देशो जाङ्गलशब्देनाभिधीयते ।

the king depends for its prosperity on the qualities of the soil, the prosperity of the territory tends to the prosperity of the king; therefore a king should choose for the sake of his prosperity land possessing good qualities. That land is preferred for the sake of prosperity that is endowed with various crops and minerals, is full of merchandise, mines and various substances, that is favourable to cattle-rearing, that abounds in water, is inhabited by well-conducted people, is charming, has forests and elephants, has facilities of water and road transport and does not depend upon rain-water only.'[177] Land that is full of gravel and stones, full of forests always infested with thieves, that is waterless, full of thorny bushes and snakes is not fit for choosing as a *rāṣṭra*. A country is to be preferred that yields livelihood easily, is possessed of the qualities of good land (cited above), is full of water, that has hills in it, that consists mostly of śūdras, artisans and merchants, the husbandmen in which undertake great projects, that is loyal (to the king) and averse to the king's enemy, that can put up with troubles and taxes, that is large in extent, full of people from various countries, that follows the right path, that possesses plenty of cattle and wealth, the principal men in which are not foolish nor vicious. These requirements show that the country must be prosperous, well-stocked with the necessaries of life and well suited to defence. There is also some difference of opinion among the smṛti writers about the composition of the population. Manu VII. 69 requires that the kingdom should consist mostly of āryas (āryaprāya), while Viṣṇu Dh. S. III. 5 holds that a country should be peopled mostly by vaiśyas and śūdras. In another place (VIII. 22) Manu says that that country in which śūdras abound, which is full of atheists and void of dvijas is overwhelmed by disease and famine and perishes. Similar provisions are found in the Matsyapurāṇa 217. 1-5, Viṣṇudharmottara II. 26. 1-5, Mānasollāsa (II. 3. verses 151-153), Nītivākyāmṛta (Janapadasamuddeśa p. 191 which defines rāṣṭra, viṣaya, deśa, janapada &c.). The Matsyapurāṇa 217. 5 and Viṣṇudharmottara II. 26.5, (*evaṁvidhaṁ yathālābhaṁ rājā viṣayamāvaset*) point out that

177. अदेवमातृका चेति शस्यते भूर्विभूतये । काम. 4. 52. देशो नद्यम्बु-वृष्ट्यम्बु-संपन्नव्रीहिपालितः । स्यान्नदीमातृको देवमातृकश्च यथाक्रमम् ॥ अमरकोश; where the rice crop depends solely on the rainfall the country is called देवमातृक (देवो माता यस्य) and where it depends on the water of rivers, tanks &c. it is called नदीमातृक.

every rāṣṭra cannot be expected to possess all the qualities mentioned by them and that the king must do the best with such qualities as his country possesses. Kauṭilya II. 1 advises[178] the king to found a district of villages either on old sites or on new ones by inducing people from other countries to immigrate or by causing thickly populated parts of his own country to send its overflowing population and to see that each village consists of not less than one hundred families nor more than five hundred, is peopled mostly by śūdra cultivators, has an extent of one *krośa* or two and is capable of offering help to its neighbours.

According to Paurāṇic geography there are seven *dvīpas*, viz. Jambu, Plakṣa, Śālmala, Kuśa, Krauñca, Śaka and Puṣkara (Viṣṇupurāṇa II. 1. 11 ff) and each dvīpa is divided into *varṣas*. Jambudvīpa has 9 varṣas of which Bhāratavarṣa is the first (Viṣṇupurāṇa II. 2. 12 ff). The Mahābhārata speaks of 13 dvīpas (Ādi. 75. 19, Vanaparva 3. 52 and 134. 20) and 18 dvīpas also (Droṇa 70. 15). For Bhāratavarṣa vide H. Dh. vol. II. pp. 17-18. Manu II. 20 looks upon the holy land of Kurukṣetra, of the Matsyas, Pañcālas and Śūrasenas as 'the chosen country' the learned brāhmaṇas in which were to be the leaders and guides of the whole world in appropriate thoughts and actions. The Viṣṇu (II. 3. 2), Brāhma, Mārkaṇḍeya 55. 21-22 and other purāṇas proudly assert that Bhāratavarṣa is the land of action (karmabhūmi). This is patriotism of a sort but not of the kind we see in western countries. Bharatavarṣa itself has comprised numerous countries from the most ancient times. The names of countries and the tribes or people inhabiting them were the same (vide Pāṇini IV. 1. 168,

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178. भूतपूर्वमभूतपूर्वं वा जनपदं परदेशापवाहनेन स्वदेशाभिष्यन्दवमनेन वा निवेशयेत् । शूद्रकर्षकप्रायं कुलशतावरं पञ्चशतकुलपरं ग्रामं क्रोशद्विक्रोशसीमानमन्योन्यारक्षं निवेशयेत् । अर्थशास्त्र II. 1. This passage clearly shows that Kauṭilya at least employed the word *janapada* in the sense of a territory to be colonized and as one which was either included within the kingdom or not so included. Dr. Prān Nath's interpretation of *janapada* that it was only 'a part of the kingdom' (p. 47, 'Study in the economic condition of ancient India') cannot be accepted in view of the express words भूतपूर्वमभूतपूर्वम्. The usage of classical writers and the Purāṇas shows that janapada means simply 'country' and Amara gives it as a synonym of देश and विषय and क्षीरस्वामी explains that जनपद is called राष्ट्र. The Kāvyamīmāṁsā on which Dr. Prān Nath relies for the number of countries employs the word *janapada* for the names of the *countries* in the four quarters of India (not for parts of any kingdom).

IV. 2. 81). In the Ṛgveda we come across the tribes of Yadus, Turvaśas, Druhyus, Anus and Pūrus (Ṛg. I. 108. 8, VIII. 10. 5 &c.) and the countries of Cedi (VIII. 5. 39), Kīkaṭa (III. 53. 4), Ṛjīka (VIII. 7. 29), Ruśama (V. 30. 12), Vetasu (X. 49. 4). In the Atharvaveda V. 22 several peoples or countries are mentioned of which Balhikas (in vv 5 and 9), Mūjavat (vv 5 and 8), Gandhāri, Aṅga, Magadha (in v. 14) deserve notice. The Ait. Br. (38. 3) divides India into five divisions in the east, south, west and north (the Uttara Kurus and Uttara Madras) and in the centre (Kuru-Pañcāla and Vaśa-Uśīnara). India was divided into two parts, Dakṣiṇāpatha (from the Narmadā southwards) and Uttarāpatha at least some centuries before Christ, since the Hāthigumphā Ins. (E. I. vol. 20 at p. 79) mentions a great many kings of Uttarāpatha and the Mahābhāṣya refers to lakes in Dakṣiṇāpatha.[179] In the Brāhmaṇas frequent mention is made of the Kuru-Pañcālas (Tai. Br. I.8. 4), Uttarakuru, Uttara-madra, Kuru-Pañcālas, Vaśa-Uśīnaras (in Ait. Br. 38. 3), Kuru-Pañcālas, Aṅga-Magadhas, Kāśi-Kośalas, Sālva-Matsyas, Vaśa-Uśīnaras in Gopatha II. 10 (ed. by Gastra). The Gandhāras occur in Chāndogya Up. (VI. 14. 1), Videha in Bṛ. Up. III. 1. 1, Madras in Bṛ.Up. III. 3. 1. In the Mahābhārata there are long lists of countries in various connections, which are more than 200 (e. g. Sabhā 4. 21-32, 20. 26-30, Sabhā 25 ff, Sabhā 52. 13-19,53. 5-9, Virāṭa 1. 12-13, Bhīṣma. 9. 39-69. 50.47-53, Droṇa 11.15-18, 70.11-13, Aśvamedhika 73-78, 83.10 ff.) The Baudhāyana-gṛhyaśeṣasūtra I. 17 prescribes a maṇḍala for the worship of the Sun and names nine countries in the eight directions and in the centre as representatives. The Purāṇas also contain long lists of countries e. g. Matsya 114. 34-56, Mārkaṇḍeya 57. 32-67 and chap. 58, Brāhma 17. 10-15 and 25. 25-39. The same country sometimes has two names (e. g. Vidarbha and Krathakaiśika denote the same country in Raghuvaṁśa VII. 1 and 32). 'Buddhist India' (by Rhys Davids p. 23) mentions the sixteen peoples (or countries), lists of which occur in the Aṅguttaranikāya I. p. 213, IV. p. 252 and in the Dīghanikāya

179. The महाभाष्य names at least the following countries: अजमीढ, अङ्ग, अम्बष्ठ, अवन्ति, इक्ष्वाकु, उशीनर, ऋषिक, कडेर, कलिङ्ग, कश्मीर, काशि, कुन्ति, कुरु, केरल, कोसल, क्षुद्रक, गान्धार, चोड, जिह्नुल, त्रिगर्त, दशार्ण, नीचक, नीप, नैश, पञ्चाल, पारस्कर, पुण्ड्र, मगध, मद्र, महिष, मालव, युगन्धर, वङ्ग, विदर्भ, विदेह, वृजि, शिबि, सुह्म, सौवीर. Some countries like अवन्ति, अश्मक, कलिङ्ग, कम्बोज, कुरु, कोसल, मगध, मद्र, साल्व, सौवीर are mentioned even by पाणिनि (in IV. 1. 170-176, IV. 2. 108).

II. p. 200 viz. Aṅgas, Magadhas, Kāśis, Kosalas, Vajjis, Mallas, Cetis (Cedis), Vaṁsas (Vatsa ?), Kurus, Pāñcālas, Matsyas, Śūrasenas, Aśmakas, Avantis, Gandhāras, Kambojas. Varāhamihira's Bṛhatsaṁhitā, Baudhāyana-gṛhyaśeṣasūtra I. 17, Kāmasūtra V. 6. 33–41, Bārhaspatya Arthaśāstra (III. 83–117), the Kāvyamīmāṁsā of Rājaśekhara (17th chapter) name numerous countries. This last divides India into five regions and gives the names of about 70 countries in the four directions but none from Central India. The Bhāvaprakāśana (pp. 309–310) gives a list of 64 countries and states that Dakṣiṇāpatha (Deccan) is a fourth of Bharatavarṣa and that in the Tretā and Dvāpara ages people afraid of being overwhelmed by ice came down to the south.[179a] 56 countries are named in some Tantra works (vide 'Indian Culture' vol. VIII. p. 33). In the lexicon called Vaijayantī of Yādavaprakāśa (11th century A.D.) edited by Dr. G. Oppert, over a hundred countries and capitals of some of the countries are named (in the Bhūmikāṇḍa and chapter on deśa thereof).

To constitute a rāṣṭra a territory of some size and a large population are required. There can hardly be a rāṣṭra of a few villages or a few hundred inhabitants. The boundaries of the numerous countries mentioned in the works cited above must have been fluid and must have changed from country to country owing to conquests.

In ancient India the modern sentiment of nationalism had hardly taken root. Writers speak of rājya (State) and of rāṣṭra (territory) as an element of rājya. They had no sense of nationality nor did they seriously work for national unity. The modern idea of a nation is more a question of feeling and sentiment than of objective fact. The State has been at all times a great co-ordinating agency, but as its boundaries were extremely variable in ancient India, the modern sentiment of nationality, of 'my country, right or wrong' hardly ever arose in India (except perhaps for over a century in Mahārāṣṭra in the 17th and 18th centuries and among the Sikhs). In the whole of Hindu India, there was no doubt a certain unity of religion, philosophy, literary forms and conventions of arts and forms of worship, and in reverence for holy places, but this did not make for a deep-seated and effective sentiment of nationhood or national unity.

179a. त्रेतायुगे द्वापरे च हिमाक्रान्तिभयाज्जनाः । पादं पादं विसृज्यैते श्रयन्ते दाक्षिणापथम् । भावप्रकाशन p. 309.

Most of the ancient sūtrakāras and smṛtis try to lay down the limits of the holy land of Āryāvarta and differentiate it from the lands of *mlecchas*. Vide H. of Dh. vol. II. pp. 11-18. The Viṣṇu (II. 3. 1-2), Mārkaṇḍeya (55. 21) and other purāṇas wax eloquent over the inportance of Bharatavarṣa and describe it as the land of action for those who want to secure heaven or final release or as the land where alone sin and religious merit were to be found (*karmabhūmir-iyam svargam-apavargam ca gacchatām* or *tat-karma-bhūmir-nānyatra samprāptiḥ puṇyapāpayoḥ* in Mārk.). Manu (II. 20) manifests great pride in and love for the holy countries of Brahmāvarta, Kurukṣetra, Matsya, Pañcāla and Śūrasena by glorifying the brāhmaṇas of these countries as those 'from whom all men on this broad earth should learn the actions and usages appropriate to them'. Vas. I. 10 also says the same. Śaṅkha-Likhita (q. by Viśvarūpa on Yāj. I. 2) hold that the country of Āryāvarta is endowed with high qualities, is ancient and holy (*deśa Āryo guṇavān ...... sanātanaḥ puṇyaḥ*). As however the smṛtis were composed at different times, embodied the usages of different provinces in India and as they provided for the observances of all those who followed the Veda, they do not generally lay omphasis on localities but rather on what they thought was common to all Āryas in India (*yat tu samānaṁ tad vakṣyāmaḥ*, as Āśv. gṛ. says). There was no doubt a great emotional regard for Bharatavarṣa or Āryāvarta as a unity for many centuries among all writers from a religious point of view, though not from a political standpoint. Therefore one element of modern nationhood viz. being under the same government was wanting. But it must be noted that from very ancient times there was always the aspiration among great kings and the people to bring the whole of Bharatavarṣa "under one umbrella". Even in the West the sentiment of nationality practically arose after the partition of Poland, and as a conse-quence of the French Revolution and of the Industrial revolution, which led manufacturing countries to search for markets and to exploit backward and less developed peoples. Vide Laski's 'Grammar of Politics' chap. VI. Modern nationalism un-doubtedly leads to great self-sacrifice and produces certain virtues of high value in the individuals that are fired by that sentiment. But the ideals of the modern nation States are not high, particularly in their treatment of other peoples and in their attitude towards less favoured States. The one aim of the leading politicians of modern nation States and most of the inhabitants of these States seems to be to raise the standard of

living of their citizens to a high level and to maintain it at that level even by exploiting and robbing weaker races and lands. This is not the place to discuss these matters further. Whatever the value of nationalism to the individuals fired by it may be, from the point of the welfare of the whole of mankind, modern nation States do not deserve to survive, unless the so-called progressive nation States are prepared to give up their racial pride, their spirit of grabbing and exploitation and to extend a brotherly hand to all struggling States to improve themselves in their own way and attain to higher standards of living without let or hindrance. It cannot be gainsaid that for several centuries in the past and also at the present moment all modern nation States have two moralities, one for their own nation and the other for their dealings with foreign States and races.

Some remarks must now be made about provincial and local administration. Each kingdom comprised *deśas* (countries) and subdivisions of deśas. The governor of a rāṣṭra was called rāṣṭrapati or rāṣṭriya. Vide p. 117 above about Puṣyagupta having been the rāṣṭriya of Surāṣṭra (Kathiawad) under Candragupta Maurya and Śānti 85. 12 (which describes what the rāṣṭriya is to do).

According to the Amarakośa the words deśa, rāṣṭra, viṣaya and janapada are synonyms. Epigraphic usage is not uniform about the dimensions of these. Sometimes viṣaya appears to be a sub-division of deśa (vide the words 'rāṣṭrapati–viṣayapati–grāmakūṭa' in I. A. vol. VIII. at p. 20 in the grant of Cālukya Tribhuvanamalla in śake 999 and I. A, vol. XII pp. 247, 251 in the grant of Rāṣṭrakūṭa Govinda in śāke 855). But in the Hirahaḍagalli plates (E. I. vol. I. p. 5) 'viṣaya' occurs first and then 'rāṣṭra'; so it appears that there 'viṣaya' is deemed to be larger than rāṣṭra. According to the Sahyādrikhaṇḍa (uttarārdha, chap. 4) deśa is made up of 100 villages, maṇḍala is made up of 4 deśas, a khaṇḍa of 100 maṇḍalas and the earth has nine khaṇḍas.[180] From the Cambay plate of śake 852 (930 A. D.), we see that maṇḍala was a sub-division of deśa (E. I. vol. 7 p. 26, at p. 40). From

180. शतग्रामो भवेद्देशो देशाश्चत्वारि मण्डलम् । शतमण्डलं भवेत्खण्डं नवखण्डा च मेदिनी ॥ सह्याद्रिखण्ड, उत्तरार्ध chap. 4 ; 'लाटदेशखेटकमण्डलान्तर्गतकाविकामहास्थानविनिर्गताय' in E. I. vol. 7 p. 40 ; 'श्रीपुण्ड्रवर्धनभुक्तौ कोटीवर्षविषये गोकलिकामण्डलान्तःपाति ... ग्रामः' in E. I. vol. 14 p. 324.

the Bangarh grant of Mahīpāla I (E. I. vol. 14 p. 324) and the Amgachhi plate of Vigrahapālā III we see that maṇḍala was smaller than viṣaya which again was a subdivision of ' bhukti '. The word ' bhoga ' (which is similar in origin to ' bhukti ') appears to be applied to a sub-division of viṣaya (which in its turn is a sub-division of rāṣṭra) in the Bhamdak [181] plate of Kṛṣṇarāja I dated śake 694 (E. I. 14 p. 121, 126) and also in the Jejuri plates of Vinayāditya in 609 śake (E. I. vol. 19 p. 62 at p. 64 where the word ' rāṣṭrapati ' does not occur). The Mitākṣarā on Yāj. I. 319 explains that only a king (mahīpati) can make a grant of land and not a *bhogapati* (i. e. the officer over a *bhoga*). Another ancient word for a division of a country is *āhāra* which occurs in the Rupnath Rock inscription and Sarnath pillar Edict of Aśoka (Corpus I. I. vol. I pp. 162 and 166), in the Nasik Inscriptions No. 3 and 12 (Govardhanāhāra and Kāpurāhāra, E. I. vol. VIII pp. 65 and 82) and in the Karle Ins. No. 19 (E. I. VII. p. 64) where we have Māmalāhāra, modern Māvaḷ (in Poona District). For want of space it is not possible to pursue this subject here. For further information vide Dr. Fleet in J. R. A. S. for 1912 p. 707 and my paper on ' the Ancient Geography of Mahārāṣṭra ' (JBBRAS. vol. XXIV for 1914–1917 pp. 648–653). In the epigraphic records particularly of the Deccan and South India we come across names of territorial divisions to which small as well as very large figures (indicating the number of villages they comprised) are affixed: e. g. a group of twelve villages in Aparānta on the sea near Kalvivana (modern Kelveṁ) is mentioned in the Sanjan plates of Buddhavarasa (E. I. 14 p. 144 at p. 150), Nyāyapadra saptadaśa in Bhoja's grant in *saṁvat* 1076 (E. I. 18 at p. 322), Kisukād 70 (E. I. 15 p. 73), Beḷvola 300 (in E. I. 13 at p. 40), Koṅkaṇa 900 ruled over by the Kadamba king Jayakeśī II (E. I. 13 pp. 298, 317), Tardavāḍi 1000 (E. I. 15 p. 25), Kuṇḍī 3000 (E. I. 13 at p. 18), Pratyaṇḍaka 4000 (E. I. III. p. 306), Karahāṭa 10000 (E. I. 13 p. 275), Banavāsi 12000 (E. I. 13 p. 179), Noḷambavāḍi 32000 (E. I. 19 p. 187), Kavaḍidvīpa sapādalakṣa (one and a quarter lakh) in E. I. 13 at p. 299, the country of 7½ lakhs (in the Lakshmeshwar Ins. of Vikramāditya VI in E. I. 16 p. 31). Vide Dr. Fleet in J. R. A. S. 1912 pp. 707–710 as to the meaning of these figures.

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181. राष्ट्रपतिविषयपतिभोगपतिप्रभृतीन् समाज्ञापयति । E. I. vol. 14 p. 121 at p. 126 ; सर्वानेव यथासंबध्यमानकान् राष्ट्रपतिविषयपतिग्रामकूटमहत्तरयुक्तकोपयुक्ताधिकारिकान् समादिशति । E. I. vol. VII. p. 26 at p. 40.

Kauṭilya II. 1 says that in the kingdom groups of villages should be set up with a chief town or fort in each, a group of ten villages being called Saṅgrahaṇa, of two hundred villages being called Khārvaṭika, of 400 villages being called Droṇamukha, and in the midst of 800 villages[182] there is the Sthānīya.

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182. अष्टशतग्राम्या मध्ये स्थानीयं चतुःशतग्राम्या द्रोणमुखं द्विशतग्राम्याः खार्वटिकं दशग्रामीसंग्रहेण संग्रहणं स्थापयेत् । कौटिल्य II. 1. Vide Dr. Shamśastri's note on these. स्थानिय has a similarity in sound and meaning to modern *ṭhāṇā*, Dr. Prān Nāth (in 'Study of the economic condition of Ancient India' p. 26) principally relying on a commentator of the Jain work called Prajñāpanopāṅga (which he misunderstands) holds that 'grāma' does not mean 'a village', but 'an estate or survey village which can pay 18 kinds of Government taxes'. The learned Doctor says that he consulted many Sanskrit lexicons, but did not find this interpretation in any one of them. That should have induced him to be cautious. But he makes the bold and facile assumption that 'lexicons were compiled from a literary view-point and are not of much assistance as far as the technical meanings of words are concerned'. His great authority, the Jain commentator, says 'गामनिवेसेसु इत्यादि । ग्रसति बुद्ध्यादीन्गुणानिति ग्रामः यदि वा गम्यः शास्त्रप्रसिद्धानामष्टादशकराणामिति ग्रामः'. Dr. Prān Nath's Jain authority is no better than lexicographers and their commentators. क्षीरस्वामी on Amara derives grāma as 'ग्रस्यते भोगिभिर्ग्रामः' i. e. the word ग्राम is derived from the root ग्रस्. The Jain commentator first derives the word ग्राम from ग्रस् and then from गम्. Dr. Prān Nāth forgets that a fanciful or scholastic derivation is not a *definition*. The rest of the reasoning on the new meaning of grāma is on a par with this and cannot be examined in detail. A commentator expressly states (*ibid* p. 27) that he gives only the *vyutpatti* (etymology) of grāma, but Dr. Prān Nāth pays no heed to this. He has not correctly grasped the scholastic discussion in the commentary quoted on p. 27. He misunderstands the word 'samagrāmāḥ' in Yāj. II. 152. The Amarakośa expressly says that 'sama' and 'samāna' are synonyms. He is often very dogmatic without looking into all ancient and medieval authorities e. g. on p. 51 he charges Dr. Fleet with misinterpretation of a Jātaka text (addha-tiyāni śatāni) which Dr. Fleet translated as 250, while Dr. Prān Nāth is sure that the meaning is '150'. He probably never noticed that so far back as the 2nd century B. C. the Mahābhāṣya had explained the word 'ardhatṛtīya' as Dr. Fleet does (अर्धं तृतीयमेषां or अर्धं तृतीयमनयोः, vide Kielhorn, vol I. p. 426 on vārtika 22 on Pāṇ. II. 2. 24). There is hardly any warrent for Dr. Prān Nāth's assertion that each grāma (as interpreted by him) contained only about five families and had only about 15 or 20 acres of cropped area (pp. 39-40). Kauṭ. (note 178) states that a grāma contains from 100 to 500 families. If the inscriptions so far published are carefully searched it will be found that grāma ordinarily meant a village in the modern sense and included several hundred acres of land. For example, in a grant of Pallava Yuvamahārāja Viṣṇugopavarman (I. A. vol. V p. 50)

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Manu VII. 114 similarly observes that in the midst of two, three or five villages the king should place a central post of guards called 'gulma' and another called 'saṅgraha' in the midst of a hundred villages. Manu VII. 115–117, Viṣṇudharmasūtra III. 7–14, Śānti 87.3ff, Agnipurāṇa 223. 1–4, Viṣṇudharmottara II. 61. 1–6, Mānasollāsa II. 2. 159–162 (p. 43) require the king to appoint a hierarchy of officers for one village, for groups of ten, twenty, hundred and thousand villages, who are to report what is wrong within their jurisdictions that they cannot themselves remedy to the officer next in grade above themselves and Manu VII. 120 prescribes that a minister of the king should supervise the doings and conflicts of all these officers. The Edicts of Aśoka show that he had to employ a hierarchy of officers such as the mahāmātras, the yuktas and rājukas for the administration of his vast empire. A similar administrative system seems to have been continued under the Gupta Emperors. From the Damodarpur, Baigram and other plates (E. I. XV. p. 113, E. I. XVII. pp. 345ff, E. I. XXI. p. 78) it appears that the Provincial Governors were appointed by the Gupta Emperor himself and were called *uparika* mahārāja, that either the Governors or Emperors appointed District officers (viṣayapati) who were often called Kumārāmātya, that the District officers were aided in their administrative work by a board of four advisers called nagara-śreṣṭhin (banker), sārthavāha (chief merchant), prathamakulika (chief of craft guilds) and prathamakāyastha (chief secretary), that the District officer had his

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very detailed and accurate boundaries of a village of 200 nivartanas are given. A nivartana was equal to a square of twenty vaṁśas on each side, each vaṁśa being equal to ten cubits; so that a *nivartana* covered an area of 40000 cubits (200 × 200) i. e. about 90000 square feet, while an acre is equal to 43560 square feet. Therefore the village referred to in the above grant was over 400 acres in extent. The Mahābhāṣya (on vārtika 8 on Pāṇ. I. 1. 7) has an interesting discussion on the several meanings of the word grāma in popular language viz. a number of houses (as in ' the grāma was burnt), the village wall or ditch (as in 'he entered the grāma'), 'men' (as in 'the grāma had gone'), a village with its forests and bushes, with its boundaries (such as rivers and hills) and with embanked fields (as in 'a grāma was acquired'). 'ग्रामशब्दोयं बह्वर्थः। अस्त्येव शालासमुदाये वर्तते ... अस्ति सारण्यकेससीमके सस्थण्डिलके वर्तते। तद्यथा ग्रामो लब्ध इति। As in modern times villages are found named after trees the same was the case in the days of Pāṇ. and Patañjali शिरीषाणामदूरभवो ग्रामः शिरीषाः तस्य ग्रामस्य वनं शिरीषवनम्। महाभाष्य on पा. I. 2. 51 (vol I. p. 224.).

headquarters in a place called adhiṣṭhāna and had his several offices or courts (adhikaraṇas), and that in sales of lands revenue officers called *pustapālas* (keepers of records of rights) were consulted and had to report. In E. I. vol. XVII. pp. 345, 348 a copperplate of Kumāragupta I has 'grāmāṣṭa-kulādhikaraṇam' which means an office having jurisdiction over 8 villages. Manu VII. 119 says that the officer over 10 villages was to have as his salary a kula of land and kula is here said to mean (by Kullūka) as much land as is ploughed by two ploughs having six oxen yoked to each. The Vaijayantī on Viṣṇu Dh. S. III. 15 says 'kulam haladvaya-karṣaṇīyā bhūḥ'. Śukra (I. 191–192) states that the lord of one hundred *grāmas* is called sāmanta, an officer appointed by a king over one hundred villages is called anusāmanta, one over ten villages is called nāyaka (compare modern '*naik*'). Manu VII. 61 and 81, Yāj. I. 322, Kām. V. 75, Viṣṇudharmasūtra III. 16–21, Viṣṇudharmottara II. 24. 48–49 say that the king should appoint as many *adhyakṣas* (superintendents) as are required for the several departments of the state, who are clever, honest and of good family. Kauṭilya[183] II. 9 prescribes 'those who are possessed of the qualifications for amātyas (cited on p. 107 above) should be appointed, according to their abilities, as superintendents of the various departments and the king should constantly examine their work, since men are naturally fickle-minded and when appointed to do work exhibit like horses change of temper'. It is pointed out in works like the Viṣṇudharmasūtra III. 16–21 and the Viṣṇudharmottara II. 24. 48–49, Śānti 69. 29, that those who are highly devoted to dharma should be appointed to the ecclesiastical or judicial department, the brave ones to military work, those who are skilled to revenue work and those who are very trustworthy should be placed in charge of mines, salts, toll-gates, ferries, elephant forests.

Kauṭilya in his 2nd *adhikaraṇa* exhaustively deals with the work done in 28 departments and the duties of their superintendents. He enters into very minute details about each and his work is encyclopaedic in character on this subject.

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183. अमात्यसम्पदोपेताः सर्वाध्यक्षाः शक्तितः कर्मसु नियोज्याः । कर्मसु चैषां नित्यं परीक्षां कारयेच्चित्तानित्यत्वान्मनुष्याणाम् । अश्वसधर्माणो हि मनुष्या नियुक्ताः कर्मसु विकुर्वते । कौटिल्य II. 9; धर्मिष्ठान् धर्मकार्येषु शूरान् संग्रामकर्मणि । निपुणानर्थकृत्येषु सर्वत्र च तथा शुचीन् ॥ विष्णुधर्मोत्तर II. 24. 48. Vide a similar verse quoted by the मिता० on या. I. 322.

Kauṭilya's work became the authority on Government and several inscriptions mention officers appointed according to the section on 'adhyakṣapracāra', which is undoubtedly a reference to Kauṭilya's 2nd adhikaraṇa. For example, in the Belava plate of Bhojavarmadeva (E. I. vol. XII. at p. 40) and in the Barrackpur grant of Vijayasena (E. I. vol. XV. p. 283) we have the words 'anyāṁśca sakala-rājapādopajīvinodhyakṣapracāroktān ihākīrtitān caṭṭabhaṭa-jātīyān janapadān kṣetrakarāṁśca'. It is not possible to do anything more than indicate very briefly the sphere of each *adhyakṣa*. The duty of the sannidhātṛ (II. 5) is to look after the construction of the treasury house, the store-houses for merchandise, for grain, for forest produce, for arms and of the jail. The samāhartṛ (the Collector-General) is to exercise superintendence over the collection of revenue from forts, the rural parts, mines, embankments, forests, herds of cattle and roads for traffic (II. 6). The samāhartṛ[184] has to divide (II. 35) the kingdom into four districts and to arrange the villages into three grades, viz. those that are exempted from taxes, those that supply soldiers and those that pay taxes in the form of grain, cattle, money, forest produce, free labour and other equivalents for taxes. It is the duty of the *gopa* to look after a group of five or ten villages under the orders of the samāhartṛ. The gopa has not only to register the total number of the inhabitants of all varṇas in the houses that pay taxes and that are exempt in the villages, but also to keep a register of the number of cultivators, cowherds, merchants, artisans, labourers, slaves, biped and quadruped animals, of the amount of money, free labour, tolls and fines that are recovered, and the number of women, men, young and old persons, and the extent of their actions, occupations, usages, expenditures. The *sthānika* (in charge of each of the four districts) should look after his charge in the same way. The superintendent of records and accounts (akṣapaṭalādhyakṣa) should have the account office constructed with its door facing the north or the east, with rooms

184. Both the samāhartṛ and the sannidhātṛ are mentioned as officers in the copperplate of Mahābhavagupta of Trikaliṅga (E. I. vol. VIII. p. 138 at p. 141 and E. I. vol. XI at p. 94). Sabara in his bhāṣya on Jaimini XII. 1. 28 refers to the samāhartṛ coming with his own phalanx of subordinates 'यथा सेनापतिर्भृत्यबलेन सहागतः समाहर्ता निजेन बलेन राजा तु सर्वैर्बलैस्तैश्चान्यैश्च'. From Hiouen Thsang's account of his travels (Beal's 'Buddhist Records' vol. I. p 78) we learn that each province kept a record of good and bad events.

(for the clerks) set apart and with shelves 'of account books well-arranged (II. 7). This officer had to enter numerous matters in the accounts, recover the king's dues from the sureties of servants, to check enbezzlement and to recover fines for loss due to neglect or fraud. The account year ended with the full moon of *Āṣāḍha*, the year being of 354 days and the salary for an intercalary month being separately paid. Among the duties of the Superintendent of records and accounts was the important one of noting in his register the dharma, method of judicial procedure and the usages of countries, villages, castes, families and corporations (deśagrāmajāti-kulasaṅghātānām dharma-vyavahāra-caritra-saṁsthānam .... nibandha-pustakasthaṁ kārayet). In II. 8 Kauṭilya specifies forty modes of embezzlement by Government servants (to which a reference is made in the Daśakumāracarita VIII). In II. 9 he employs the picturesque figure that it is not possible to know exactly how officers appointed to the several businesses of the State extract wealth, just as fish always dwelling in water cannot be observed when they drink water. The superintendent of treasury (II. 11) shall in the presence of qualified persons receives into the treasury gems, pearls, articles of great or small value and forest produce (like sandal wood, *agaru* etc.). The superintendent of mines and of government manufactories (II. 12) must be proficient in the science of metals, mercury, liquids that ooze from the holes, caves and sides of mountains and hills. Under him are officers called *lohādhyakṣa* (who carries on the manufacture of vessels of copper and other metals), a *lakṣaṇādhyakṣa* (a superintendent of mint, who manufactures silver and copper coins for the State), a *rūpadarśaka*[184a] (examiner of coins, who regulates the dealings with paṇas as a medium of exchange among the people and for stocking in the treasury), *khanyadhyakṣa* (who attends to conches, diamonds, pearls, coral and trade in them), a lavaṇādhyakṣa (superintendent of salt). The suvarṇādhyakṣa (the superintendent of gold) has to construct a goldsmith's office for the manufacture of gold and silver articles with a single door and four halls, to appoint a skilful and trustworthy goldsmith to have a shop in the centre of the road (II. 13) and not to allow any one who is not an employee to

184 a. Patañjali in the Mahābhāṣya on vārtika 4 on Pāṇ. I. 4. 52 cites the example 'पश्यति रूपतर्कः कार्षापणम्। दर्शयति रूपतर्कं कार्षापणम्'. Here रूपतर्क appears to mean one who can examine a coin or probably the same as रूपदर्शक in Kauṭ.'.

enter the goldsmith's shop. If any one so entered he was to be beheaded. The State goldsmith (II. 14) has to manufacture gold and silver coins for the citizens and rural inhabitants through artisans employed by him. The superintendent of the storehouse (II. 15) has to keep together the produce of crown lands, taxes from the country districts, accidental revenue, manufacture of rice, oil &c. The superintendent of commerce (paṇyādhyakṣa, II. 16) should keep himself acquainted with the demand or absence of demand for and the rise and fall in the prices of various kinds of merchandise produced on land or from water and brought by land or water routes. The superintendent of forest produce (kūpyādhyakṣa, II. 17) was to collect forest produce through guards of forest and Kauṭilya gives a long list of trees, varieties of bamboos, creepers, fibrous plants and rope-making material, drugs and poisons, skins of various animals, that came under this officer's care. The superintendent of armoury (āyudhāgārādhyakṣa, II. 18) was to employ experienced artisans to manufacture arms, wheels, machines, armour &c. required in battle or for the defence of forts, or for battering the cities of the enemy. The superintendent of weights and measures[185] was to get manufactured weights from half *māṣaka*

185. The weights specified are: 10 seeds of māṣa or 5 guñjās = 1 suvarṇa-māṣaka, 16 suvarṇa-māṣakas = one suvarṇa or karṣa, 4 karṣas = one pala, 88 white mustard seeds = one rūpyamāṣaka, 16 rūpyamāṣakas or 20 śaibya seeds = one dharaṇa. The Kāśikā on Pāṇ. II. 4.21 furnishes the interesting item of information that weights and measures (probably in vogue in its day) were first introduced by the Nandas (nandopakramāṇi mānāni). The chief measures of distance given in II. 20 are: 8 atoms = one particle of dust thrown up by a chariot wheel, 8 particles = likṣā, 8 likṣās = a medium-sized yūkā (louse), 8 yūkās = yava (barley corn) of medium size, 8 yavas = one aṅgula, 12 aṅgulas = vitasti, 2 vitastis = aratni or one prājāpatya hand, 2 vitastis plus 4 aṅgulas (called dhanurgraha) = one hasta used in measuring pastures and cubic measures, 4 aratnis = daṇḍa or dhanus or nālikā-pauruṣa, 10 daṇḍas = rajju, 3 rajjus = nivartana, 1000 dhanus (or 2000 acc. to another reading) = goruta, 4 gorutas = one yojana. A *nivartana* was probably so called because it represented a day's ploughing by a team of eight or six oxen (from the root *vṛt* with *ni*), meaning the area from which they stopped after a day's work. Vide H. of Dh. vol. II. p. 859 note 2021 for *nivartana* and *gocarma*. The extent of the nivartana differed acc. to different authorities. The Matsya said it was 30 daṇḍas square, each daṇḍa being of the length of seven hastas, while Śātātapa held the daṇḍa to be of 10 hastas. The Līlāvatī (I. 7) held that a nivartana was 20 vaṁśas square, each vaṁśa being of 10 hastas. According to the lexicon Vaijayantī, in Kosala the yojana was of four gavyūtis, while

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onwards up to one hundred suvarṇas, weights being made of iron or stones found in the Magadha country and the Mekala mountain. The superintendent of tolls (śulkādhyakṣa, II. 21) was to erect near the principal gate of the capital a toll-house and its flag and when traders arrived with merchandise make four or five toll-collectors take down their names, whence they came, what merchandise they brought and whether it bore seal-mark. In II. 22 Kauṭilya specifies various rates of tolls for imports and exports. The superintendent of weaving (II. 23) was to employ qualified persons to make threads, coats (of armour), cloths and ropes and he was to employ for cutting wool, fibres, cotton, hemp and flax, widows, cripple women, girls, ascetic women paying off fines by doing work, mothers of prostitutes, old women servants of the palace, *devadāsis* (temple girls) who have ceased to do temple services. This superintendent was charged with the task of providing work for women who do not leave their homes, the wives of persons who have gone abroad, women who are cripple or unmarried and who have to work for their own maintenance. He was to give to them spinning work through the maid-servants in his department. If he stared at their faces when they came to exchange their work for wages or spoke to them on any other matter he was fined in the first amercement. Thus the State helped home or cottage industry. It is to be noted that he had large powers of levying fines and

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in Magadha it was only equal to two gavyūtis (last verse of deśādhyāya in bhūmikhaṇḍa). Kauṭ. gives hastas of various lengths for various purposes. Compare Manu VIII. 132–134, Viṣṇudharmasūtra IV. 1–7, Yāj. I. 362–365, Nārada pariśiṣṭa 57–60, Bṛhatsaṁhitā, 57. 1 ff, Vāyupurāṇa 101. 118 for some of these, which differ in some details from Kauṭilya's statements. Kauṭ. (II. 20) states the duration of a *nāḍikā* to be the time required for the passage of one āḍhaka of water from a pot through an aperture of the same diameter as a wire of 4 aṅgulas in length and made out of four suvarṇamāṣakas. 2 nāḍikās are equal to a muhūrta and 15 muhūrtas are equal to a day or a night. In II. 19 he gives measures of corn as follows:– 4 kuḍumbas = prastha, 4 prasthas = āḍhaka, 4 āḍhakas = droṇa, 16 droṇas = khārī, 20 droṇas = kumbha. The droṇa differed for various purposes. Vide above (p. 124 note 165) for a quotation from Mit. on Yāj. III. 274. Hemādri, vratakhaṇḍa pp. 51–57, gives quotations from various sources for measures of time, corn &c. These measures were different in different countries and at different times. The Līlāvatī (of 12th century A.D.) I. 7 speaks of the khārī in Magadha being equal to 16 droṇas. Vide n. 165 above and H. of Dh. vol. II. p. 881 n. 2053 and L. D. Barnett's 'Antiquities of India' (pp. 206–210) for tables of weights and measures.

awarding bodily punishments e. g. if a woman refused to work after receiving the wages he could cut off her thumb (? or bind up her thumb with the index finger so as to form a pair of tongs). The superintendent of agriculture (sītādhyakṣa,[186] II. 24) himself knowing or assisted by those who know the science of agriculture and the Āyurveda (the ancient lore) of trees was to collect at the proper times all kinds of corn, flowers, fruits, vegetables, bulbs, hemp and cotton seeds and to employ slaves, labourers and prisoners who worked to pay off fines they could not pay, to sow seeds on crown lands. In this chapter he makes interesting remarks about the extent of rainfall viz. the rainfall in a *jāṅgala* country (defined above at p. 132) is 16 droṇas, in *anūpa* (very moist) countries 24 droṇas, 13½ droṇas in the Aśmaka country (modern Khandesh and part of Berar), 23 droṇas in the Avanti country (round about modern Ujjain), an immense quantity in the Aparāntas (west coast of India) and the Himālayan regions.

The superintendent of liquor was to carry on the traffic in liquor and ferments in the capital, the other parts of the country and in army camps by employing men familiar with them, he was to impose a fine of 600 paṇas if any one other than the manufacturers, licensed vendors and vendees sold or purchased liquor, he was not to allow liquor-shops to be opened close to each other, he was to see that liquor was sold in small quantities such as ¼ or ½ of a *kuḍumba* or a half prastha to persons of known character in order that (lit. for fear) workmen employed should not cause loss through carelessness, that *āryas* might not violate the rules of good conduct and that desperadoes should not commit indiscreet acts. Śukra was even more strict as regards

186. Sītā, according to the Amarakośa, means the 'lines or furrow made by the ploughshare'. Therefore Kauṭilya appears to employ the word 'sītā' in the sense of 'land that has been cultivated'. Prof V. K. Ramchandra Dikshitar (in 'Hindu Administrative Institutions' p. 369) is not right when he explains सीता लाङ्गलपद्धतिः (of Amara) as 'methods and means connected with the plough'. Paddhati only means the line or furrow made in the field by the ploughshare. Kṣiraswāmī explains as स्यति भुवं सीता हललेखा. In II. 15 Kauṭilya himself explains 'sītā' as the collection of grain brought in by the superintendent of agriculture 'सीताध्यक्षोपनीतः सस्यवर्णकः सीता'. The sītādhyakṣa appears to have been concerned with crown lands, while the share of crops leviable on lands of private ownership was called 'bali'. Both these were the concern of the samāhartṛ as stated in V. 1. (where rāṣṭra is said to include sītā, bhāga, bali, kara &c.). When in II. 15 sītā and rāṣṭra are separately mentioned that is on the analogy of the maxim of *brahmaṇ-aśramaṇa* or of *gobalīvarda*.

wine, as he did not allow any one to drink wine in the day-time (IV. 4. 43). The superintendent of slaughter houses (sūnādhyakṣa, II. 26) was entrusted with the power to regulate the killing of animals for meat and was to impose the highest amercement on those who trapped or beat or killed deer, cattle, birds or fish which were declared to be under State protection or that dwelt in protected forests. The superintendent of nautch-girls (gaṇikādhyakṣa [187]) is dealt with in II. 27. The topic of *veśyās* has already been treated of in H. Dh. vol. II. pp. 637–639. Kauṭ. says that a *gaṇikā* was to be employed for a salary of one thousand paṇas, whether she was born in a prostitute's family or not and she was to possess beauty, youth and accomplishments (i. e. the 64 *kalās* enumerated in Kāmasūtra I. 3. 16). Kauṭ. prescribes that, if she left the country or died, her daughter or sister took her place and estate or her mother could substitute some other gaṇikā in her place ; when none of these existed the king took her wealth and her son did not inherit her wealth. A gaṇikā could purchase her freedom by paying to the king 24000 paṇas as ransom. She was to hold the umbrella, the golden pitcher and the fan for the king when he was seated on the throne or in a chariot or in his palanquin. There were grades among the gaṇikās as best, middling and inferior and salaries differed by a thousand. The sons of prostitutes were to be the chief actors on the royal stage. It appears from these provisions that the veśyas were more or less slaves. The superintendent of ships (nāvadhyakṣa, II. 28) was to look after the passage of ships not only over the seas and at the mouths of rivers, but also over lakes and rivers in the sthānīya (vide above p. 140) and other sub-divisions of the kingdom. Kauṭ. prescribes that villages on the sea-shore and river banks were to pay a fixed tax, fishermen were to render a sixth part of the haul of fish as fees for fishing licenses and merchants were to pay the customary tolls levied in port towns. This superintendent was to request the ships that touched at a harbour on their voyage to a distant port to pay the toll, he was to destroy pirate vessels bound for the country of an enemy as well as those that violated the usages of the port. The superintendent of cattle (II. 29) was entrusted with the rearing,

187. आभिरभ्युच्छ्रिता वेश्या शीलरूपगुणान्विता । लभते गणिकाशब्दं स्थानं च जनसंसदि ॥ पूजिता सा सदा राज्ञा गुणवद्भिश्च संस्तुता । प्रार्थनीयाभिगम्या च लक्ष्यभूता च जायते ॥ कामसूत्र I. 3. 20–21. This shows that every *veśyā* was not a gaṇikā, but only one that was honoured for her accomplishments (in 64 kalās) and who became the cynosure of all eyes.

preservation and care of cows, bulls, buffaloes and the dairy produce. The superintendent of horses (II. 30) was to record the breed, age, colour, marks, groups and places of origin of horses, which were to be classified as those kept in salehouses for sale, those that were recently purchased, those captured in battles, those that were pledged and those temporarily kept in stables &c. Kaut. notes that the breed of horses from Kāmbhoja, Sindhu (modern Sindh), Āraṭṭa (western Punjab) and Vanāyu (North-west of India) countries are the best of horses, Bāhlīka (modern Balkh), Pāpeya, Sauvīra (eastern Sindh and western Rajputana) and Taitila breeds are of middle quality and the rest are inferior. The superintendent of elephants (II. 31) had to take steps to guard elephant forests and supervise elephants that were in stables, the catching, training and feeding of them, their accoutrements &c. Kaut. devotes one chapter (II. 32) to the training and classification of elephants and medical treatment when they fell ill. The superintendent of chariots and that of infantry (II. 33) have the charge of the chariot department and of the six classes of infantry respectively. The superintendent of passports (mudrādhyakṣa) issued passes to inhabitants of the country or foreigners for entering into or going out and the superintendent of pastures (II. 34) was to see the passes and devote himself to the care of pastures. Kauṭilya provides that a pass (mudrā) was to be given on payment of a māṣaka, that one could enter into or go out of a country only when one had a pass, that a person who entered without a pass was to be fined twelve paṇas and that the superintendent of pastures and his men were to examine whether persons not going by the royal road but through pastures had a pass or not and that the superintendent of pastures and his men were to convey the approach of thieves and enemies by beating drums and blowing conches and were to send messages about the entrance of enemies into pastures by means of domesticated pigeons carrying letters bearing the official stamp or by means of smoke and fire. The nāgaraka (the mayor of the capital or cities or the chief of the police in the capital) was to look to the affairs of the capital (or the big cities). A *gopa* (under the *nāgaraka*) was to superintend a group of twenty or forty families in the capital and an officer designated *sthānika* was to be in charge of each of four wards into which the capital was to be divided. Yāj. II. 173 mentions an officer called *sthānapāla* in connection with the finding of lost goods who appears to be the same as sthānika. The gopa and sthānika had to keep a register of the caste, gotra,

name and occupation of the men and women in their districts and also of their income and expenditure. Managers of charitable institutions had to send information to them about the heretics and travellers arriving to reside therein. Numerous rules about reporting and punishments for various defaults and wrongs are laid down, which are passed over. Manu VII. 121 and Śānti 87. 10 also provide for the appointment in each city (in the kingdom) of a high officer, who was to superintend all matters affecting the city and who had ample powers of restraint and coercion. Many of the superintendents mentioned by Kauṭilya occur under the same names in the Kāmasūtra e. g. gavādhyakṣa, sūtrādhyakṣa, nāgaraka (explained by the com. as daṇḍapāśika), paṇyādhyakṣa (in V. 5. 7–10). Vide E. I. vol. 15 pp, 127–128 for a statement on the provincial administration under the Guptas.

As regards the emoluments of the officers in charge of a village, ten villages &c. Manu (VII. 118–119) has some interesting rules : 'The headman of a village should obtain (as his emoluments) those articles which the villagers have to furnish every day to the king viz. food, drink, fuel and the like. The officer over ten villages should enjoy one *kula*[188], that over twenty villages should enjoy five *kulas*, the superintendent of a hundred villages should receive the revenue of one village and the high officer over a thousand villages should enjoy (the revenue of) a town. All this, as Medhātithi says, is only approximate and recommendatory and was not literally followed, but

188. The word ' pratyaham ' (every day) excludes taxes on fields that are levied once a year or taxes levied on particular occasions only ; while the words ' food, drink and fuel ' exclude cattle, money &c. The word ' kula ' appears to be used as a technical term. It may mean as much land as would be required for the maintenance of a family. But there is another sense given by the commentators of Manu. Sarvajña-Nārāyaṇa quotes a text that *kula* means ' two halas '. He and Kullūka quote Hārīta to the effect that a plough (yoked acc. to dharma) is one of eight bullocks, one of six bullocks is employed by those who want only bare maintenance, householders employ one of four bullocks, while those who in their greed want to incur heavy sin employ a plough with two bulls only. So by kula is meant as much land as can be ploughed with two ploughs to which either 8, 6 or 4 bullocks are yoked. That 6 or 8 or 12 oxen were yoked to the plough is stated in Atharva VI. 91.1 and Tai. S. V. 2. 5. 2. हलं तु द्विगुणं कुलमिति वचनाद् द्वाभ्यां हलाभ्यां या कृष्यते भूस्तां कुलमित्यर्थः । हलमानं च-अष्टागवं धर्महलं षड्गवं जीवितार्थिनाम् । चतुर्गवं गृहस्थानां द्विगवं ब्रह्मघातिनामिति हारीतोक्तम् । धर्महलं प्राज्यं गृहस्थहलं वा । सर्वज्ञनारायण on मनु VII. 119.

only means that a salary commensurate with the position and responsibilities of each officer should be received by him. Vide Śānti 87. 6-8 for rules similar to Manu's (where the officer over a thousand villages gets as his salary the revenues of a śākhānagara). Kauṭilya (in V. 3) sets out the salaries of many officers and servants as follows: the salary paid to the chief mantrin, purohita and a few others has been already stated above (p. 120); the dauvārika, the superintendent of the harem (antarvaṁśika), the praśāstṛ, the samāhartṛ and the sannidhātṛ were to receive 24000 paṇas; the princes (other than the crown prince), the nurse (mātṛ, mother ?) of the princes, nāyaka, the superintendent in charge of justice (or commercial transactions ?) in the capital (the pauravyāvahārika), the superintendent of royal manufactories (karmāntika), the members of the council of ministers, the rāṣṭrapāla (governor of a province), antapāla (the guardian of the borders) were to receive 12000 paṇas; the salary of the heads of śreṇis (the military corporations ?), the heads of the elephant army, cavalry, and chariot army, and the pradeṣṭṛs was 8000 paṇas; the superintendents (below the commanders) of infantry, cavalry, chariots and elephants, of the forest produce and elephant forests will each receive 4000; the chariot driver (anīka), the army physician, the trainer of horses, carpenters, *yoniposaka* (?) will receive 2000 ; the foreteller (the reader of omens), astrologer (who finds auspicious times for undertakings), the reader of purāṇas, the sūta, māgadha (bard), the assistants (puruṣa) of the purohita and adhyakṣas will receive 1000 ; trained foot-soldiers, the accountants and scribes will receive 500; musicians 250, but trumpet-blowers will receive 500 ; artisans (*kāru*) and craftsmen (*śilpin*) 120 ; servants in charge of bipeds and quadrupeds, workers doing miscellaneous things, attendants near the king, bodyguard and the officer procuring free labour (viṣṭi) will receive 60 ; those appointed to do piece work (kāryayukta, v. l. āryayukta), the elephant driver, boys (māṇavaka, a page ?), mountain-diggers, all attendants, teachers and learned men shall receive honorarium (pūjāvetana) according to their merit from 500 to 1000; charioteer of the king 1000 ; spies of the five sorts (vide above p. 129) will receive 1000 ; the village servants (like washer-man), the spies of the type of sattrin, desperado, poisoner and ascetic women will receive 500 ; the wandering spies (vide above p. 130) three hundred or more according to the labour involved. The superintendents in charge of a group of hundred or a thousand (servants) were to regulate the subsistence (bhakta), cash salary, the perquisites,

the appointment and transfer of those under them. But there shall be no transfer of those who are the king's personal servants and of those who are appointed to guard forts and the country parts. The Śukranītisāra (I. 211) emphasizes that salaries should be in paṇas, that a king should not make a gift even of a finger-breadth of land as emolument to any servant, but that if he does give land, it should be held only for the life-time of the officer [189]. Kauṭilya (in II. 1) prescribes that lands may be granted as emoluments to superintendents (of the various departments), the accountants, to officers called gopa and sthānika, to officers in the army, physicians, horse-trainers, but without power to sell or mortgage. Śukra II. 117–204 mentions numerous officers of the army, the treasury &c. Śukra IV. 7. 24–27 sets out the salaries of officers, when the king's income is one lakh of *mudrās* a year. Kauṭ. provides for pensions and gratuities. He says ' the sons and wives of those that die while on duty shall get subsistence and wages. Young children, aged persons and ailing persons related to the (dying) officers shall be shown favour. On occasions of funerals, sickness or child-birth the king shall bestow money and honours on them '. The Mahābhārata (Sabhā. 5. 54) prescribes [190] that it is the duty of the king to support the wives of those that meet death or calamities in the king's service. Śukra II. 406–411 contains very modern-looking rules about sick-leave, casual leave, pension after 40 years of service &c.

The above provisions from Kauṭilya's work show how States in ancient India engaged in almost all the activities of modern States, had an equally complicated machinery of administration and an army of high and low officers. It will also be noticed how, as in India at present, comparatively very high salaries were paid to ministers and heads of departments as compared with the salaries of clerks (e. g. the ordinary clerks received five hundred, while the chief minister and samāhartṛ, the

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189. न दद्याद्भृत्यकृत्यङ्गुलमपि भूमेः स्वत्वनिवर्तनम् । वृत्त्यर्थं कल्पयेद्वापि यावद्भृत्यास्तु जीवति ॥ गुणी तावद्भृत्वतार्थं विसृजेच्च सदैव हि । आरामार्थं गृहार्थं वा दद्याद्भूखण्डां कुटुम्बिनम् ॥ शुक्रनीतिसार I. 211–212.

190. कच्चिद्दारान्मनुष्याणां तवार्थे मृत्युमीयुषाम् । व्यसनं चाभ्युपेतानां बिभर्षि भरतर्षभ ॥ सभा 5. 54 ; पादहीनां भृतिं त्वार्ते दद्यात् त्रैमासिकीं ततः । पञ्चवत्सरभृत्ये तु न्यूनाधिक्यं यथा तथा ॥ षाण्मासिकीं तु दीर्घार्ते तदूर्ध्वं न च कल्पयेत् । नैव पक्षार्धमार्तस्य हातव्याल्पापि वै भृतिः ॥ ... चत्वारिंशत् समा नीताः सेवया येन वै नृपः । ततः सेवां विना तस्मै भृत्यर्धं कल्पयेत्सदा ॥ ... स्वामिकार्ये विनष्टो यस्तत्पुत्रे तद्भृतिं वहेत् । यावद्बालोऽन्यथा पुत्रगुणान् दृष्ट्वा भृतिं वहेत् ॥ शुक्रनीति॰ II. 406, 407, 410, 413.

collector-general, received respectively 48000 and 24000 i. e. 96 and 48 times as much respectively. If all the different officers mentioned in the works on dharmaśāstra, arthaśāstra and in inscriptions be collected together, they will make a formidably long list. A list from one inscription is set out below as a sample.[191] Vide Vogel's 'Inscriptions from Chamba' pp. 120-136 for explanations of about 30 titles of officers occurring in the inscriptions.

A few words must be said about local administration. The word *grāma* occurs even in the Ṛgveda. In Ṛg. I. 114. 1 the poet offers his praise and prayer to Rudra so that he hopes that 'all bipeds and quadrupeds may fare well and all beings in this village may be free from disease and may enjoy prosperity'.[192] In Ṛg. V. 54.8 'heroes (or men) conquering grāmas' are mentioned (grāmajito yathā naraḥ). In Ṛg. X. 62. 11 Manu is styled 'grāmaṇī' and the bestower of a thousand (cows?) and in Ṛg. X. 107. 5 it is said that the 'grāmaṇī who is endowed with (or dispenses) dakṣiṇā (cows or wealth) walks in front (of the village people)'. In the Tai. S. II. 5.4.4 it is said 'the prosperous are three indeed, viz. the learned brāhmaṇa, the village headman (grāmaṇī) and the rājanya (warrior)'.[192a] In the Tai. Br. I. 1.4.8, the consecration of fire for a vaiśya sacrificer is made with the mantra 'manostvā grāmaṇyo vratapate vratenādadhāmi' (where Manu is styled grāmaṇī). In the Śat. Br. V. 4. 4. 19 the grāmaṇī is said to be stronger than his co-sharer (sajāta). Vide S. B. E. vol. 41 p. 111. We saw above

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191. In the Naihati grant of Ballālasena of Bengal in E. I. vol. 14 p. 156 at p. 160 we have one of the longest lists of high and low officers. 'परमेश्वर-परमभट्टारक-महाराजाधिराज-श्रीमद्बल्लालसेनदेवः कुशली समुपगताशेषराज-राजन्यक-राज्ञी-राणक-राजपुत्र-राजामात्य-पुरोहित-महाधर्माध्यक्ष-महासान्धिविग्रहिक-महासेनापति-महामुद्राधिकृत-अन्तरङ्ग-बृहदुपरिक-महाक्षपटलिक-महाप्रतीहार—महाभोगिक-महापीलुपति-महागणस्थ-दौःसाधिक-चौरोद्धरणिक-नौ-बल-हस्त्यश्व-गो-महिषाजाविकादिव्यापृतक-गौल्मिक-दण्डपाशिक-दण्डनायक-विषयपत्यादीनन्यांश्च सकलराजपादोपजीविनोऽध्यक्षप्रचारोक्तानिहाकीर्तितान् चट्टभट्टजातीयान् जनपदान् क्षेत्रकरांश्च ब्राह्मणान् ब्राह्मणोत्तरान् यथार्हं मानयति बोधयति समादिशति च । The word 'adhyakṣapracāroktān' apparently refers as said above (p. 143) to the section II on the activities of adhyakṣas in Kauṭilya. Vide appendix for a somewhat exhaustive list of officers mentioned in dharmaśāstra and arthaśāstra works and in inscriptions.

192. यथा शमसद् द्विपदे चतुष्पदे विश्वं पुष्टं ग्रामे अस्मिन्ननातुरम् ॥ ऋ. I. 114. 1.

192a. त्रयो वै गतश्रियः शुश्रुवान् ग्रामणी राजन्यस्तेषां महेन्द्रो देवता । तै. सं. II. 5. 4. 4.

(p. 111) that among the *ratnins*, grāmaṇī (the village headman) was one. Grāma did not necessarily mean a village but may have been applied to a town (though not a capital). The headman of a village was called grāmaṇī, grāmika or grāmādhipati (in Manu VII. 115–116, Kauṭ. III. 10), grāmakūṭa (in inscriptions e. g. E. I. vol. VII. p. 39 of śake 852, E. I. vol. VII. p. 183, 188) and Paṭṭakila, modern Patil (in Ujjain plates of 975 and 1023 A. D. in I. A. vol. 6 p. 51, 53, vol. 18 p. 322 grant of Bhoja in *saṁvat* 1076, I. A. 16 p. 254, E. I. vol. XI. p. 304, 310 of *saṁvat* 1176). In an inscription of the 13th century from the Poona District we have the form 'paṭṭela' (E. I. vol. VII. at p. 183). The word 'gāvuṇḍa' for a village headman in the Canarese Districts is derived from grāmakūṭa (E. I. vol. VII p. 183). Paiṭhīnasi[193] quoted by Aparārka p. 239 states that the food of a grāmakūṭa could not be partaken by a brāhmaṇa. The Gāthāsaptaśatī frequently refers to the great influence of the grāmaṇī and the love adventures of his son in the village (I. 30–31, VII. 24). The Kāmasūtra states (V. 5.5) that the young son of a grāmādhipati had certain women of the village at his beck and call.[194] According to the Śukranītisāra I. 193 a grāma (village) is one krośa in extent and yields a revenue of one thousand silver karṣas, while half a village is called *palli* and half of palli was *kumbha*. Hemādri in Dānakhaṇḍa (p. 288) quotes from the Mārkaṇḍeya-purāṇa definitions of pura, kheṭa, kharvaṭa and grāma. Yāj. II. 167 makes a distinction between grāma, kharvaṭa and nagara (town) as regards the extent of the pasture lands to be preserved round them. Baudhāyana Dh. S. II. 3. 58 and 60 condemns residence in a city for a religious brāhmaṇa where the body is covered with dust which enters one's mouth and eyes and recommends for residence a grāma abounding in water, fuel, fodder, fuel-sticks, kuśa grass, flowers, which is full of well-to-do people, endowed with industrious people, where the majority are āryas and which cannot be entered by robbers. In the Sabhāparva 5.84 five officers of a village are referred to. It appears that from being a very high officer (a ratnin) in Vedic times the grāmaṇī was reduced in his influence, came to be appointed by the king alone and the office became hereditary and could be given permanently. Vide

193. पैठीनसिः । सांवत्सरिकयाण्टिकग्रामकूटानां विषम् । अपरार्क p. 239.

194. ग्रामाधिपतेरायुक्तकस्य हलोत्थवृत्तिपुत्रस्य यूनो ग्रामीणयोषितो वचनमात्रसाध्यास्ताश्चर्षण्य इत्याचक्षते विटाः । कामसूत्र V. 5. 5.

E.I. vol. VII. p. 177, 188, 189 [195]. The Śukranītisāra (II. 120–21) states that there were to be six officers in a village and (II. 428–29) prescribes their caste, viz. sāhasādhipati (i.e. a magistrate to deal with wrongs involving force) was to be a kṣatriya, grāmanetṛ (the headman) a brāhmaṇa, bhāgahāra (the person collecting the state land revenue) a kṣatriya, lekhaka (a scribe, corresponding to the modern *kulkarṇī* in the Deccan) should be a kāyastha, śulkagrāha (the toll-gate keeper) a vaiśya, pratihāra (the guard at the gate of the village wall) a śūdra. Śukra (in II. 170–175) sets out their duties. The headman was to be alert in protecting the villagers like their parents from thieves, robbers and from the State officers, the bhāgahāra was to devote special care to the tending of trees ; the lekhaka was to be skilled in accounting and proficient in several spoken languages ; the pratihāra was to be of strong body, proficient in arms, humble and to call the villagers with the respect due to each ; and the toll-gate keeper was to levy tolls in such a way that sellers did not incur loss of capital spent by them. From Kauṭ. III. 10 it appears that the village headman had the authority to inflict fines in certain cases e. g. when the headman (grāmika) had to travel on some business of the whole village the villagers were to accompany him by turns, but if they failed to do so they had to pay a fine of one paṇa or a half paṇa. Similarly, if a villager does not co-operate in the getting up of a show (prekṣā) in the village, he or his people would not be allowed to see the show and he was to be fined if he clandestinely saw it. In villages, particularly in Karṇāṭaka and South India and in brahmadeya grants (to learned brāhmaṇas) the village assemblies (sabhā) carried on local administration. From the Koṭavumachgi Inscription of Cālukya Vikramāditya V dated śake 934 (1012 A. D.) it appears that Ummachige was a great educational centre in the 11th century and 104 Mahājanas of the village were entrusted with the proper conduct of worship in the temple, the imparting of education, the feeding of ascetics, the supply of water to the village and the punishment of criminals (E. I. vol. 20 p. 59). Vide Gopalan's ' History of the Pallavas of Kāñcī ' pp. 93, 153–157 for the working of the village assemblies (sabhās) from the 9th century onwards, but as he observes (p. 154), ' we do not know the nature of the rules that regulated their working, their exact sphere of action and their

195. अस्य ग्रामस्य ग्रामकूटत्वं कह्लाम्बात्मजकुसुमायुधाय दत्तं शाश्वतम् । E.I. VII p. 177 at p. 188 (grant of Eastern Cālukya Amma dated 945 A. D.).

relation to the central government.' An inscription of king Parāntaka I (907–947 A. D.) at Uttaramerur deals with several classes of village committees that were appointed by vote (Annual Report of Archæological Survey of India, 1904–5 pp. 131 ff). Five committees, viz. annual committee, garden committee, tank committee, gold committee (for currency or for collecting taxes in cash), *pañcavāra* committee, are described and reference is made to a sixth called 'justice committee' and the mode of election and the qualifications and disqualifications of members are described in detail (pp. 142–145). Prof. Nilkanth Sastri in 'Studies in Cola History' (pp. 131–175) publishes the text of two Parāntaka Inscriptions with English translation and exhaustive notes. Vide also E. I. vol. 22 p. 5 for resolutions of the sabhā at Manur to be followed in future meetings, the qualifications in property, education and character of the members &c., E. I. vol. 24 p. 28 about the regulations of sabhā from two Uttaramallūr Inscriptions and E. I. vol. 23 p. 22 for a note on the pañcavāra committee. For village communities as described in Buddhist works in the 7th century B.C., vide Rhys Davids in 'Buddhist India' pp. 45–51. It appears from Pāṇini and the commentary Kāśikā thereon that certain craftsmen were attached hereditarily to the village, were probably paid a certain part of the crop produce yearly for their services and corresponded to the modern village servants (called the twelve *balutedārs*) in the Deccan. For an account of these *balutedārs*, vide Grant Duff's 'History of the Marathas' (Bombay ed. of 1863, vol. I. pp. 23–27). For example, Pāṇini (VI. 2. 62) teaches the accent of a compound word formed from 'grāma' with another word denoting 'śilpin' (craftsman), such as grāmanāpita (village barber) or grāmakulāla (village potter), which are two examples given by the Kāśikā on this *sūtra*. From Pāṇini V. 4. 95 ('grāmakauṭābhyām ca takṣṇaḥ') it may be inferred that a carpenter also was a village servant as in modern times in the Deccan. Bṛhaspati[196] contains very

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important information about local administration in villages. A compact formed among villages, guilds and corporations (gaṇa) is called a *samaya* (agreement); such an agreement must be observed in times of distress and for acts of dharma. Two, three or five persons shall be appointed as advisers of groups; their advice shall be followed by the villagers, the guilds, the corporations and others. Examples of agreement as to times of distress are: When there is drought, there may be a compact that for the performance of a sacrifice to the planets or the like each field or house should contribute so much money or when there is trouble from robbers, each house should send one able-bodied and armed man. Then examples are given by Bṛhaspati himself about acts of dharma. The village people should put down in writing what work they are going to do, such as the repair of a house for their assembly, a shed for distributing water to travellers, a temple, a tank or a garden, the performance of the necessary saṁskāras (upanayana or funeral rites) of the poor and helpless, gifts for the performance of sacrifices, prevention of famine-stricken groups of families from coming. Such conventions would be proper and should be respected by all the villagers. Whoever being able to carry out such agreements violates them should be punished with loss of all wealth and banishment. Bṛhaspati further says[197] that the heads of families, guilds and gaṇas and the inhabitants of towns and forts may pronounce the two punishments of reprimand and condemnation against wrong-doers and may also excommunicate them and the punishments and favours declared by them according to rules should be approved of by the king, since such power is regarded by the sages as delegated to them. For ejecting out of the village one who is not guilty of theft or adultery with another's wife the village headman or the village was liable to pay, according to Kauṭilya III. 10, a fine of 24 paṇas. It will be seen from what has preceded that village administration was self-contained and would function whatever Government might happen to be at the centre. The central Government did not very much interfere with local administration, except in the matter of land revenue, protection against invasion and exercised only general control and supervision. The village communities were miniature states.

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There was a great deal of decentralization or devolution of authority from the central government to the village committees and authorities. They were also entrusted with civil and criminal justice, as we shall see later on. For further details on the organization of a village as a political unit, Dr. R. C. Majmudar's 'Corporate life in Ancient India' chap. II. pp. 135 ff. and Fick (p. 161) may be consulted. Just as there was some organization in villages in general, so also guilds (śreṇis) and groups (gaṇas) had their own regulations and conventions. In XI. 1 Kauṭilya refers to kṣatriya guilds in the countries of Kāmbhoja and Surāṣṭra that maintained themselves on husbandry and followed the profession of arms (vide above p. 88 n. 120). In III. 14 he refers to guilds of workmen or labourers (saṅgha-bhṛtāḥ). Manu (I. 118) declares that his work deals not only with the enduring dharmas of countries, castes and families, but also with the dharmas of heretical sects (pāṣaṇḍa) and of groups (gaṇa). Manu (VIII. 41) requires the righteous king to consider carefully the dharmas of castes, countries, guilds and families (to find out whether they are opposed to the Vedas) and uphold those dharmas (that are not opposed) as binding (on those respective persons). Yāj. II. 192 prescribes that the king should respect the usages and conventions of occupational guilds, merchants, heretical sects, and groups (corporations &c.) and allow them to pursue the course of action they had followed from ancient times. Nārada (samayasyānapā-karma, verses 2-6) and Bṛhaspati quoted in the Viramitrodaya (vyavahāra) contain very important directions as to what conventions of guilds the king should respect and what he is not bound to respect. Nārada says that the king should enforce the conventions agreed upon by heretic sects, naigamas (merchants), śreṇis and other groups residing in the country or the capital. The king may allow them to follow their special rules (e. g. speaking the truth), their special actions (begging in the morning without having taken a bath), their mode of meeting (on hearing a drum being beaten), the means of livelihood they have been used to (e. g. dressing as an ascetic). But the king should prohibit (out of their usages and conventions) such as are opposed to the king's interest, or are disapproved of by the people in general, would be ruinous to the purposes of the king. The king should not tolerate their creating factious groups among themselves, taking up arms for a purpose detrimental to the State, and causing injury to each other. The king should specially curb those who cause dissensions among the several

groups; if they are connived at in these activities they might cause terrible danger.[198] A good deal has already been said about guilds and corporations in H. Dh. vol. II. pp. 66–69. Among inscriptions, the following may be studied: the Nasik Ins. No. 15 of the time of Ābhīra Īśvarasena (E. I. vol. VIII p. 88, where the śreṇis of potters, oil-pressers and water-drawers receive deposits), Junnar Buddhist cave Inscription (A. S. W. I. vol. 4 p. 97, where a deposit of money with śreṇis of bamboo-workers and braziers is made), Gupta Inscription No. 16 p. 70 (an endowment was entrusted to the guild of oil-men, whose head was Jīvanta), Gupta Inscriptions, No. 18 p. 79 (silk weavers from Lāṭa coming to Daśapura and building a Sun temple), E. I. vol. 15 p. 263, E. I. vol. 18 p. 326 and p. 30, E. I. 16 p. 332, E. I. vol. I. 155 (of 933 *saṁvat*, inscription at Gopagiri, modern Gwalior, where the guilds of oil-millers and of gardeners are mentioned), I. 184 (Pehoa inscription, where a guild of 34 horse-dealers from different countries, some being brāhmaṇas, agreed to impose upon themselves and their customers tithes to be distributed to certain temples). Rhys Davids in ' Buddhist India ' (pp. 90–96) gives a list of the 18 guilds that probably existed in the times of the early Buddhist works (though two or three of them are of doubtful existence) and the number of which (18) is sometimes mentioned in the Jātakas (as in Mūgapakkhajātaka No. 538, vol. VI p. 14 in Cowell's tr.). For further details about the working and organization of guilds, vide chap. I of Dr. R. C. Majmudar's ' Corporate life in ancient India ', and ' Indian Culture ' vol. 6 (for 1940) pp. 421–28 (on the economic guilds of blacksmiths, barbers &c. in the Kuṣāṇa period).

In numerous places rules are laid down about the qualifications of the ordinary servants (parivāra, bhṛtya or anujīvin) of kings, how they should conduct themselves, how servants should

198. पाषण्डिनैगमश्रेणीपूगव्रातगणादिषु । संरक्षेत्समयं राजा दुर्गे जनपदे तथा ॥ यो धर्मः कर्म यच्चैषामुपस्थानविधिश्च यः । यच्चैषां वृत्त्युपादानमनुमन्येत तत्तथा ॥ नानुकूलं च यद्राज्ञः प्रकृत्यवमतं च यत् । बाधकं च यदर्थानां तत्तेभ्यो विनिवर्तयेत् ॥ मिथः सङ्घातकरणमहितं शस्त्रधारणम् । परस्परोपघातं च तेषां राजा न मर्षयेत् ॥ पृथग्गणांश्च ये भिन्द्युस्ते विनेया विशेषतः । आवहेयुर्भयं घोरं व्याधिवत्ते ह्युपेक्षिताः ॥ नारद (समयस्यानपाकर्म 2–6). In the Amraoti Inscriptions (E. I. vol. 15 p. 263) we find the words धञकडकस निगमस (of the trade guild of Dhanyakaṭa). This place is variously identified (vide E. I. vol. 20 p. 9). The अमरकोश holds that नैगम and वाणिक् are synonyms. विश्वरूप on या. II. 192 explains 'सार्थवाहादिसमूहो नैगमः', अपरार्क p. 796 explains 'सह देशान्तरवाणिज्यार्थं ये नानाजातीया अधिगच्छन्ति ते नैगमाः'.

find out whether the king is pleased or displeased with them. Vide Kauṭilya V. 4, Virāṭaparva 4. 12–50 (where the refrain of most verses is 'sa rājavasatim vaset'), Matsyapurāṇa 216 (the whole of which is quoted in the Rājadharmakāṇḍa pp. 24–27 and in the Rājanītiprakāśa pp. 189–192), Agnipurāṇa 221, Viṣṇudharmottara II. 25. 2–28, Kām. IV. 10–11, V. 1–4, 6, 9, 11–63 (most of which are quoted in the Rājanītiratnākara pp. 51–58), Śukranītisāra II. 54–68, 205–253. On the word 'akṣudrapariṣad' occurring in Yāj. I. 310 (where the Mit. has the reading 'akṣudrospuruṣaḥ') Viśvarūpa quotes a passage from Śaṅkha[199] 'a *haṁsa* (swan i. e. a good king) surrounded by vultures (greedy servants) is not desirable, but a vulture (i.e. a greedy king) surrounded by haṁsas (servants of spotless character) may be preferred.' The Rājanītiprakāśa (p. 185) quotes the same passage from Śaṅkha-Likhita with an addition viz. 'faults arise from those who surround the king and such faults are enough to ruin (the king). Therefore the (king) should first (before engaging his servants) put down in writing whether servants are endowed with learning, character and good family.' Śukra inculcates loyalty on servants in the following remarkable[200] words 'one should not forsake a good master when he is in adversity. Should not one always and quickly desire the welfare of one's protector whose salt (lit. food) one has eaten with honour even once' (II. 246–247) ? This sentiment pervaded most Hindu servants in ancient and medieval times, even under foreign rulers professing a different religion. The Rājanītiprakāśa p. 176 quotes a fine verse from the Garuḍapurāṇa as to matters to be principally considered in selecting servants, which are four, viz. education, character, family and

199. तथा च शङ्खः । न हंसो गृध्रपरिवारः कामं तु गृध्रो हंसपरिवारः स्यात् । विश्वरूप on या. I. 305; शङ्खलिखितौ । न गृध्नुपरिवारः स्यात्कामं गृध्रो राजा श्रेयान् हंसपरिवारो न हंसो गृध्नुपरिवारः । परिवाराद्धि दोषाः प्रादुर्भवन्ति तेऽलं विनाशाय । तस्मात्पूर्वमेव तत्परिवारं लिखेच्छ्रुतशीलान्वयोपपन्नम् । राजनीतिप्र. p. 185. This quotation seems to be corrupt. We have probably to omit the word न before हंसपरिवारः. In वसिष्ठ XVI. 21–26 (Fuhrers' ed. of 1916) we have a very similar passage, but it is corrupt. Vide राजधर्मकाण्ड p. 22 for the same passage ascribed to शङ्खलिखित. The पञ्चतन्त्र has a similar verse of same sense (I. 302) 'गृध्राकारोपि सेव्यः स्याद्धंसाकारैः सभासदैः । हंसाकारोपि संत्याज्यो गृध्राकारैः स तैर्नृपः ॥'

200. आपद्गतं सुभर्तारं कदापि न परित्यजेत् । एकवारमप्यशितं यस्यान्नं ह्यादरेण च । तद्दिष्टं चिन्तयेन्नित्यं पालकस्याशु सा न किम् ॥ शुक्र. II. 246–247.

actions, just as gold is tested in four ways, viz. by weighing it or by rubbing it (on a touchstone), by cutting it and by heating it.[201]

Some responsibilities of the Government or king in ancient India towards the people will now be dealt with. From Kauṭilya (II. 29 and II. 34) we find that the State made great efforts for the rearing of cattle, made stringent rules for their protection and for the provision of pastures. Manu VIII. 237, Yāj. II. 167, Matsya 227. 24 also make provision for pastures round villages, towns and cities. Kauṭilya requires the superintendent of cattle to classify cattle as calves, steers, tameables, draught oxen, bulls to be yoked, stud-bulls, bulls meant for carts, cattle meant for meat and buffaloes meant for carrying loads or for being yoked, pregnant cows, milch cattle &c. and to mark them and note in a register of beasts the branded marks, natural marks, colour, the distance between the horns. He prescribes corporal punishments and fine for those who unauthorizedly kill or steal cattle or incite others to do so. He prescribes even the amount of fodder, oil-cakes, bran and salt on which different kinds of animals put to different kinds of work are to be fed. From the Mahābhārata also we learn that even princes[201a] went to supervise and enumerate the herds of cattle belonging to the State. Vide Vanaparva 239. 4 and 240. 4-6. Even such a grammatical work as the Mahābhāṣya incidentally gives expression to the view that a country's wealth consists in its food-crops and in abundance of cattle.

We saw above (pp. 130-131) that spies were to be employed (acc. to Kauṭ.) to test whether State officers took bribes. Yāj. (I. 336, 338, 339) prescribes that the king should protect his subjects from the harassment caused by *kāyasthas* (the accountants and scribes), that he should ascertain the doings of the State officers through spies, honour those that are well-conducted and severely punish those who are badly behaved and should deprive those who take bribes of their wealth and banish them from the country. Vide also Manu VII. 122-124 and Viṣṇudharmottara for similar rules. The Pañcatantra (I. 343) has the same verse as

201. गरुडपुराणेपि । यथा चतुर्भिः कनकं परीक्ष्यते तुलाकषच्छेदनतापनेन । तथा चतुर्भिर्भृतकः परीक्ष्यते श्रुतेन शीलेन कुलेन कर्मणा ॥ राजनीतिप्र. p. 176. This is गरुडपुराण 112 3 with slight variations.

201a. स्मारणे समयः प्राप्तो वत्सानामपि चाङ्कनम् । वनपर्व 239. 4, on which नीलकण्ठ explains 'स्मरणहेतौ कर्मणि गवां संख्यापूर्वं वयोवर्णजातिनाम्नां लेखने।'; अर्थवानयं देश उच्यते यस्मिन्गावः सस्यानि च वर्तन्ते । महाभाष्य, vol. II. p. 401.

Yāj. I. 336 (except the last pāda). Medhātithi on Manu IX. 294 remarks that the kingdom has no fear of ruin if kaṇṭakas (wicked people who are like thorns) are removed and justice is properly administered and that kaṇṭakas are generally under the protection of the queen, the prince, the king's favourites or the commander-in-chief.

Great attention was paid to agriculture. In the Sabhāparva 5. 77 the king[202] is advised to have large tanks in different parts of the country full of water and to see that agriculture did not depend on the rains alone. Megasthenes (Fragment I. p. 30 of McCrindle's work) notes that the greater part of the soil of India was in his day under irrigation and consequently bore two crops in the year. Even from the Tai. S. V. 1. 7. 3 it appears that two crops were grown in the year (tasmād dviḥ saṁvatsarasya sasyam pacyate). The Vāj. S. 18. 12 contains a list of twelve different kinds of crops such as rice, *yava*, wheat, *māṣa*, sesame, *mudga*, *masūra* &c. and the Bṛ. Up. VI. 3. 13 enumerates ten kinds of grain (grāmyāṇi dhānyāni). In the Hāthigumphā Inscription of Khāravela king of Kaliṅga (E. I. vol. 20 p. 71) it is stated that (p. 79) a canal which had already been opened in the 103rd year of the Nanda kings (i. e. in the 4th century B. C.) was extended by him in the 5th year of his reign. Rudradāman at great expense from his own treasury without any additional taxation or demand for free labour restored the famous Sudarśana lake near Junāgaḍ (E. I. vol. VIII. p. 36) that had been built by the Governors of Candragupta and Aśoka and been breached by floods. Irrigation had been made use of from Vedic times. Ṛg. VII. 49. 2 refers to rivers and springs naturally flowing and to channels that were dug up. South Indian Inscriptions show how the Pallavas and kings of other dynasties built tanks which were named after the kings themselves or after some distinguished chief of the locality and that are in existence even now. Vide S. I. I. vol. II part III, p. 351, E. I. vol. IV p. 152 (mention of tank called 'parameśvarataṭāka'), S. I. I. vol. I p. 150, E. I. vol. VIII p. 145 (for mention of rājataṭāka near which four nivartanas were granted by Cārudevī). The great engineer Suyya under Avantivarman of Kashmir (833–858) successfully dammed the river Vitastā with the result that a khārī of rice which could formerly be purchased for 200 *dīnāras* could be had after the great irrigation

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202. कच्चिद्राष्ट्रे तडागानि पूर्णानि च बृहन्ति च । भागशो विनिविष्टानि न कृषिर्देवमातृका ॥ सभा 5. 77.

work for 36 *dīnāras* (vide Rājataraṅgiṇī V. 84–117). Kauṭilya (II. 24) refers to the various ways in which crops could be raised with water and the revenue to be demanded in each case, e. g. those who watered crops with manual labour had to pay 1/5th of the produce, those who carried water on their shoulders paid ¼th, those who watered their crops by means of water-lifts or water-wheels from natural springs paid one-third and those who raised water from rivers, lakes, tanks and wells paid ¼th. He notes that sugarcane crops are a heavy responsibility, as they are liable to many evils and entail great expense. Sugarcane had been grown even in the times of the Atharvaveda (I. 34. 5). The Śukranītisāra (IV. 4. 60) remarks that the king should see to it that there is plenty of water in his kingdom by digging wells, wells with steps, tanks, lakes &c. Megasthenes (fragment XXXIV p. 86 of McCrindle's ' Ancient India ') says that some superintend the rivers, measure the land as is done in Egypt and inspect the sluices by which water is let out from the main canals into their branches so that every one may have an equal share of it. Kauṭ. (IV. 3) devotes a special chapter to the king's duty to save the kingdom from national calamities, viz. fires, floods, diseases, famines, rats, wild elephants (or beasts), snakes and evil spirits. He gives practical hints for human and religious remedies and rites against these calamities. The measures against famine suggested by him are: the king may provide the people with seeds and food, start works for those who are distressed, distribute either his own collection of provisions or that of the rich or call for help from his allies, tax the rich and make them disgorge their wealth, migrate to other countries that have abundant harvests. National calamities are called *īti*, which are six: excessive rainfall, drought, rats, locusts, parrots and too close presence of foreign kings[203]. The work of Kāmandaka states that calamities are either divine or human and that the first are of five kinds. In another place he gives a longer list of calamities. There are several references in ancient and medieval works to severe famines. In the Chāndogya Upaniṣad I. 10. 1–3 we

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203. अतिवृष्टिरनावृष्टिर्मूषकाः शलभाः शुकाः । अत्यासन्नाश्च राजानः षडेता ईतयः स्मृताः ॥ क्षीरस्वामी on अमर०, and राजनीतिप्रकाश p. 447 ; compare ईतयश्च न सन्ति मे । उद्योगपर्व 61. 17 ; हुताशनो जलं व्याधिर्दुर्भिक्षं मरकास्तथा । इति पञ्चविधं दैवं व्यसनं मानुषं परम् ॥ काम. 13. 20 = बुधभूषण p. 60 v. 329 ; अतिवृष्टि...शुकाः । असत्करश्च दण्डश्च परचक्राणि तस्कराः । राजानीकप्रियोत्सर्गो मरकव्याधिपीडनम् । पशूनां मरणं रोगो राष्ट्रव्यसनमुच्यते ॥ काम. 13. 63–64 = बुधभूषण p. 59 verses 322–323.

have the story of Uṣasti Cākrāyaṇa who took from another's plate *kulmāṣas* that the other had been eating (i. e. he took *ucchiṣṭa* food), when the country of Kurus was overwhelmed with a shower of hail (or by locusts). The Bālakāṇḍa (chap. 9) refers to a famine in the country of Aṅga under Romapāda. The Nirukta II. 10 refers to a drought in the dim past for twelve years in the kingdom of Śantanu. A Mauryan inscription from Mahāsthāna (ancient Puṇḍranagara) shows that Gaṇḍaka coins were distributed and also corn to famine-stricken people (J. A. S. B. for 1932 p. 123). The Sohagpur Copperplate Inscription (of Mauryan times) contains an order of the mahāmātras of Śrāvastī that the *dravya* storehouses were to be spent only in case of drought. Vide Annals of B. O. R. Institute, vol. XI p. 32ff., E. I. vol. 22 p. 1 and J. A. S. B. vol. VII (for 1941) part 2 p. 203. The Rājataraṅgiṇī records several times the occurrence of famines in Kashmir at different periods (e. g. vide II. 17–54, V. 270–278, VII. 1219 ff). The Maṇimekhalai (chap. 28) speaks of a famine for twelve years at Kāñcī in South India. There was a terrible famine (called the famine of Durgādevī) for twelve years in the Deccan about 1396 A. D. (vide Grant Duff's 'History of the Marāthas' vol. I. p. 43). Vide E. I. vol. 15 p. 12 for a reference to a severe famine in *śake* 1313 when paddy could not be had even at the rate of ten nāḷis a paṇam.

It has been shown (in H. Dh. vol. II. pp. 113, 369, 856–858) how it was the king's duty to support learned brāhmaṇas, to hold assemblies of poets and learned men, to make gifts of land to educational institutions and to promote learning in all ways. Vṛddha-Hārīta VII. 229–230 says that only learned brāhmaṇas who are endowed with *tapas* are proper objects of the king's bounty. Some emperors like Harṣa went far beyond what was reasonable. The Chinese pilgrim tells us (Beal's 'Buddhist Records &c.' vol. I pp. 214, 233) that at the end of every five years Harṣa held an assembly (*pariṣad*) at Prayāga and gave away all in charity. The Śukranītisāra (I. 368–369) holds that a king should be on the look-out for educated men, should appoint them to offices suited to their education, should honour every year those who have attained eminence in learning and the arts and take measures for the advancement of learning and arts. It has already been shown how this had been followed by ancient and medieval Indian kings to the letter. A comparison with the British Indian Government in the 18th century and the first decades of the 19th will be highly interesting. After the battle of

Plassey in 1757 the British East India Company got three such rich provinces as Bengal, Bihar and Orissa. During over 50 years the only thing that was done by the ruling power for the encouragement of learning among Indians was that in 1780 Warren Hastings started a *Madrassa* of Muslim religious learning at Calcutta with a *moulvi* and 40 stipendiaries and Lord Cornwallis founded a Sanskrit college at Benares in 1792. When the East India Company's Charter was renewed in 1813 the only provision that was made for education and encouragement of learning (by George III, 1813 chap. 155, clause 43) was 'that *it shall and may be lawful* for the Governor-General-in-Council to direct that *out of any surplus* which may remain of the rents, revenues and profits arising from the said territorial acquisitions, after defraying the expenses of the military, civil and commercial establishments and paying the interest of the debt, a sum of *not less than one lakh of rupees* in each year shall be set apart and applied to the revival and improvement of literature and the encouragement of the learned natives of India and for the introduction and promotion of a knowledge of the sciences among the inhabitants of, the British territories in India'. Detailed comment is not called for. More than 50 years after British rule began, when at least half of what is British India now had come into the hands of the British, and when the yearly income must have been many crores of rupees, the *sum* of *a lakh* of rupees was to be set apart for education of two kinds (Eastern and Western) in the whole of the then British India. Further this provision was not compulsory but only permissive, and was to be availed of only if some surplus was left after everything else had been provided for.

As in western Jurisprudence, so in India the king was looked upon as *parens patriæ*, the protector or guardian of all minors. Gaut.[204] X. 48-49 and Manu VIII. 27 prescribe that the king shall protect the property of a minor until he attains majority or until he returns from his teacher's house. Medhātithi on Manu VIII. 27 says that the minor's relatives like the uncles may contend that one of them is the guardian of the minor's property but it is the king who is to see that the minor's property is kept

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204. . रक्ष्यं बालधनमाव्यवहारप्रापणात् । समावृत्तेर्वा । गौ. X. 48-49; रक्षेद्राजा बालानां धनान्यप्राप्तव्यवहाराणां श्रोत्रियवीरपत्नीनाम् । शङ्खलिखित q. in वि. र. p. 598; बालधनं राज्ञा स्वधनवत्परिपालनीयम् । अन्यथा पितृव्यादिबान्धवा मयेदं रक्षणीयं मयेदं रक्षणीयमिति विवदेरन् । मेधा. on मनु VIII. 27. On मनु VIII. 28 he remarks यः कश्चिदनाथस्तस्य सर्वस्य धनं राजा यथावत् परिरक्षेत् । तथा चोदाहरणमात्रं वशाद्य ॥

safe. Baud. Dh. S. II. 2. 43, Vas. 16. 8–9, Viṣṇu Dh. S. III. 65, Śaṅkha-Likhita contain a similar rule. Nār. (ṛṇādāna 35) declared that a person was a minor till the 16th year. Manu VIII. 28–29, Viṣṇudharmasūtra III. 65 extend the same rule and say that the king must take care of barren women, women who have no sons, women whose families are extinct, wives and widows who are faithful to their husbands and of those who are afflicted with disease. Nār.[205] as quoted by Medhātithi says that if a woman has nobody in her husband's or father's family to protect her, then it is the king who is to protect her. Kauṭ.[206] (II. 1) makes it a duty of the elders of the village to take care of and increase the properties of minors and of temples.

It was the special concern of the king to see that proper weights and measures were used. Kauṭ. (II. 19) as stated above (pp.145–146) provides for a special superintendent of weights and measures. Vas.[207] (19. 13) and Manu VIII. 403 provide that all weights and measures must be duly marked (or stamped), that once in six months they must be re-examined and that the weights and measures for objects required by the class of householders must be guarded against falsifications. Yāj. II. 240 and Viṣṇudharmasūtra V. 122 prescribe as punishment the highest ammercement for those who fabricate false balances, edicts, measures and coins and also for those who use them in their transactions. The Nītivākyāmṛta (p. 98) requires the king to be vigilant as regards merchandise, balances and measures, since there is none who excels traders in stealing people's money before their very eyes.[208] Vide Alberuni (tr. by Sachau) vol. I chap. XV about weights and measures current in India in the 11th century.

Another important responsibility of the king concerned thefts. Aśvapati, king of Kekaya, boasted that in his kingdom there was no thief, no close-fisted person, no drinker of wine,

205. निर्नियोगास्मरक्षासु भरणे च स ईश्वरः । परिक्षीणे पतिकुले निर्मनुष्ये निराश्रये । तत्सपिण्डेषु वाऽसत्सु पितृपक्षः प्रभुः स्त्रियाः । पक्षद्वयावसाने तु राजा भर्ता प्रभुः स्त्रियाः ॥ quoted by मेधा० on मनु V. III. 28. The first three half-verses are नारद (दायभाग 28–29), the printed text of which does not contain the half verse पक्ष० &c.

206. बालद्रव्यं ग्रामवृद्धा वर्धयेयुराव्यवहारप्रापणात् । देवद्रव्यं च । कौटिल्य II. 1. p. 48.

207. गार्हस्थ्याङ्गानां च मानोन्माने रक्षिते स्याताम् । वसिष्ठ 19. 13.

208. पण्यतुलामानवृद्धौ राजा स्वयं जागृयात् । न वणिग्भ्यः सन्ति परे पश्यतोहराः । नीतिवाक्या. p. 98.

(Chān. Up. V. 11. 5). Āp. Dh. S.[209] (II. 10. 26. 6-8) lays down that the officers should protect a city against theft for one *yojana* round it and in the case of villages for one *krośa* round them and that whatever is stolen within those limits must be returned to the owners by the officers. Gautama X. 46-47, Manu VIII. 40, Yāj. II. 36, Viṣṇudharmasūtra III. 66-67, Śānti 75. 10 prescribe that the king should recover from the thief stolen property and restore it to the owner (without distinction of caste), that if he cannot restore it he should compensate the sufferer from his own treasury, and that, if he retained the property recovered from a thief or did not make efforts to catch the thief and compensate the owner, the king incurred sin. Kauṭ. III. 16 contains a similar rule.[210] Viśvarūpa on Yāj. II. 38 quotes a prose passage[211] of Bṛ. with a similar import. The Viṣṇudharmottara[212] (II. 61. 52) remarks that if a person is robbed by his own servants then he (the king) may endeavour to recover it from the servants (by threatening or beating them), but need not restore it from his own treasury. Yāj II. 270-272, Nār. (pariśiṣṭa 16-21) and Kāt.[213] give further directions, viz. the thief should be made to restore the property stolen or its price; if the thief cannot be found the officers and wardens of the country pay the price of the stolen articles; the property stolen in the village should be made good by the headman of the village, if the thief's foot-steps

209. सर्वतो योजनं नगरं तस्करेभ्यो रक्ष्यम्। क्रोशं ग्रामेभ्यः। तत्र यन्मुष्यते तैस्तत्प्रतिदाप्यम्। आप. ध. सू. II. 10. 26. 6-8.

210. परचक्राटवीभूतं तु प्रत्यानीय राजा यथास्वं प्रयच्छेत्। चोरहृतमविद्यमानं स्वद्रव्येभ्यः प्रयच्छेत्। कौटिलीय III. 16 p 190.

211. चोरहृतमपजित्य यथास्थानं गमयेत्। कोशाद्वा दद्यात्। गौ. X. 46-47; प्रत्याहर्तुमशक्यं स्याद्धनं चोरैर्हृतं यदि। तत्स्वकोशात्प्रदेयं स्यादशक्तेनोपजीवतः॥ शान्ति 75.10. The मिताक्षरा on या. II. 36 quotes Gauṭ. and Śānti 75. 10; 'तथा च बृहस्पतिः। चोरापहृतं तु सर्वेभ्योऽन्विष्यार्पणीयम्'। अलाभे स्वकोशाद्वा। अददच्चोरकिल्बिषी स्यात्। विश्वरूप on या. II. 38 (of Tri. ed.).

212. न तत्र राज्ञा प्रदातव्यं गृहे यत्परिचारकैः। प्रचरद्भिर्हृतं द्रव्यं कार्यं तत्रान्वेषणम्॥ विष्णुधर्मोत्तर II. 61. 52, quoted by राजनीतिप्र. p. 127.

213. गृहे तु मुषितं राजा चौरग्राहांस्तु दापयेत्। आरक्षकांश्च दिक्पालान् यदि चौरो न लभ्यते॥ ग्रामान्तरे हृतं द्रव्यं ग्रामाध्यक्षं प्रदापयेत्। विवीते स्वामिना देयं चोरोद्धर्ताऽविवीतके॥ कात्यायन quoted by अपरार्क p. 844. Vide 'Selections from Peshwa Daftar' vol. 43 p. 131 (No 166) for a comparatively recent (18th century) instance of a village (Pāṭas in this case) being held responsible collectively for a theft.

are not traced as going out of the village; if the theft takes place in a pasture land or forest (and the thief is not found), the owner of it should be made to pay; if however the theft is not committed in a forest but on the road then the officers appointed to arrest thieves should be made to pay; the whole village may be made to pay the compensation when the theft is within the boundaries of a village but outside the limit of the residential quarters, if the footsteps of the thief are not traced as going out of the village; if the theft takes place beyond one *krośa* from a village then the surrounding five or ten villages may be made to pay the compensation. Yāj. II. 271 and Kāt. mention an officer called 'cauroddhartā' ('or coroddhartā'). The 'cauroddharaṇika' (thief-catcher) is an officer mentioned in numerous inscriptions e. g. in the Palitana plates of Dharasena II of Valabhi in Gupta year 252 (E. I. vol. XI at p. 83), in the inscription of Nārāyaṇapāla where we have both cauroddharaṇika and koṭṭapāla, modern Kotwal (I. A. vol. XV p. 304) and in the grant of Ballālasena quoted above (p. 153, n. 191). Kauṭilya IV. 13 also gives similar rules and mentions an officer called 'corarajjuka' who has to make good the loss of merchandise by theft between two villages or lands that are not pasture lands.

The first quality required in a king according to Yāj. I. 309 quoted above (p. 44) is great energy and Kauṭ. also (in VI. 1) mentions 'great energy' (mahotsāha) among the qualities called 'ābhigāmika'. Works on dharmaśāstra and arthaśāstra emphasize the fact that a king must always be full of activity and must not be lethargic or fatalistic. In the Mahābhārata the topic of human effort and *daiva* (fate or destiny) comes up for treatment in numerous places and is put in the mouth of several characters with different emphasis according to circumstances. In Ādi 1. 246-247, 89. 7-10, Sabhā 46. 16, 47. 36, 58. 14, Vanaparva 179. 27-28, Udyoga 8. 52, 40. 32, 159. 4, 186. 18, Āśramavāsika 10. 29 the emphasis is on *daiva* as all powerful, it being said that human effort is useless as against *daiva*. A golden mean is advocated in Ādi. 123. 21, Sabhā 16. 12, Udyoga 79. 5-6, Śānti 56. 14-15, Sauptika 2. 3, in all of which it is said that worldly affairs require both *puruṣakāra* (effort) and *daiva*. In certain other passages it is recommended that effort is superior to daiva and that one's business is to make efforts and not to care for fate; e. g. in Droṇa 152. 27, Śānti 27. 32, 58. 13-16, 153. 50, Anuśāsana 6. 1 ff, Sauptika 2. 12-13 and 23-24. A few of the striking passages indicative of the three lines of thought are

set out in the note below.[214] Energetic action, according to Śānti. 58. 13-15, is declared by Bṛhaspati to be the root of rājadharma. Nectar was obtained and asuras were killed by the gods by means of energetic action and Indra secured his high position in heaven and here by energetic action. Br. makes the characteristic remark 'A man who is a hero of action leads those who are heroes in speech and the latter are seen to cater for the pleasures of the former and wait humbly on him'. The Bhagavadgītā in its final summing up of the philosophy of Activism without an eye to the fruit of it but from a sense of duty declares (XVIII. 13-16) 'that in the Sāṅkhya philosophy five categories are mentioned as conducive to the accomplishment of all actions viz. the place, the agent, various kinds of instruments, diverse and separate activities and lastly *daiva*; that whatever action a man commences either with his body, words or mind these five are its causes, whether the action be righteous (nyāyya) or the opposite of it, and that this being the true state of things (i. e. the fruit depending on the co-operation of five elements and not on one alone) that man who regards himself alone as bringing about a result is a fool and has no correct perception.' Kauṭilya also (I. 19 last two verses) says 'activity (*utthāna*) is the root of wealth and the opposite of it is the root of evil. In the absence of activity the loss of present and future acquisitions is sure; by activity a king can obtain his desired object and plenty of wealth'. Yāj. (I. 349 and 351) states that success in undertakings depends upon both fate and human effort, yet fate is nothing but the

214. दैवं प्रज्ञाविशेषेण को निवर्तितुमर्हति ॥ विधातृविहितं मार्गं न कश्चिदतिवर्तते। आदि 1. 246-247; दैवं पुरुषकारेण को निवर्तितुमुत्सहेत् । उद्योग 186. 18; दैवमेव परं मन्ये पौरुषं तु निरर्थकम् । सभा 47. 36; दैवं पुरुषकारेण को वञ्चयितुमर्हति । दैवमेव परं मन्ये पुरुषार्थो निरर्थकः । वनपर्व 179. 27 (said by भीम when caught by *Ajagara*); न हि दिष्टमतिक्रान्तुं शक्यं भूतेन केनचित् । दिष्टमेव ध्रुवं मन्ये पौरुषं तु निरर्थकम् ॥ उद्योग 40. 32; (2) दैवे पुरुषकारे च लोकोयं संप्रतिष्ठितः । आदि 123. 21; जयस्य हेतुः सिद्धिर्हि कर्म दैवं च संश्रितम् । सभा 16. 12; दैवे च मानुषे चैव संयुक्तं लोककारणम् । उद्योग 79.5; न ह्युत्थानमृते दैवं राज्ञामर्थं प्रसाधयेत् । साधारणं द्वयं ह्येतद्दैवमुत्थानमेव च ॥ शान्ति 56. 14; न हि दैवेन सिध्यन्ति कार्याण्येकेन सत्तम । न चापि कर्मणैकेन द्वाभ्यां सिद्धिस्तु योगतः ॥ सौप्तिक 2. 3; (3) यत्नो हि सततं कार्यस्ततो दैवेन सिध्यति । शान्ति 153. 50; तत्रालसा मनुष्याणां ये भवन्त्यमनस्विनः । उत्थानं ते विगर्हन्ति प्राज्ञानां तन्न रोचते ॥ वृद्धानां वचनं श्रुत्वा योभ्युत्थानं प्रयोजयेत् । उत्थानस्य फलं सम्यक् तदा स लभतेऽचिरात् ॥ सौप्तिक 2. 12 and 23; उत्थानं हि नरेन्द्राणां बृहस्पतिरभाषत । राजधर्मस्य तन्मूलं श्लोकांश्चात्र निबोध मे ॥ उत्थानेनामृतं लब्धमुत्थानेनासुरा हताः । उत्थानेन महेन्द्रेण श्रैष्ठ्यं प्राप्तं दिवीह च । उत्थानवीरः पुरुषो वाग्वीरानधितिष्ठति । उत्थानवीरान्वाग्वीरा रमयन्त उपासते । शान्ति 58. 13-15.

human effort of past lives manifesting its effect (in this life) and that as on a single wheel a chariot cannot progress, so fate cannot accomplish anything without human effort. Yāj. I. 350 refers to other views viz. fate alone leads to success, human effort alone does so, that success results of itself (without any cause), while others say that it is Time that brings about all results. Manu VII. 205, Matsya 221. 1-12 (all of which are quoted in the Rājanītiprakāśa pp. 313-314) and Viṣṇudharmottara II. 66 (which has the same verses as in Matsya 221) inculcate the same doctrine as that of Yāj. I. 349 and 351 and emphasize that one must always make efforts (tasmāt sadotthānavatā hi bhāvyam-Matsya 221. 12). The Matsyapurāṇa 221. 2 emphatically[215] states that effort is superior. Medhātithi on Manu IV. 137 quotes a *subhāṣita* ' those devoid of effort are engaged in calculating the aspects of planets; there is nothing impossible of accomplishment for those who are determined and who are able to put forth spirited efforts.' Kauṭ. (IX. 4 last two verses), Kām. V. 11, XIII. 3-11 emphasize the importance of strenuous efforts. Śukranītisāra (I. 46-58) holds a long disquisition on effort and *daiva*. It contains the following fine sentiments (I. 48-49): ' Men of intellect whose career is honourable regard human effort as the highest (and not fate), while impotent men not being able to make efforts have recourse to fate; but all is centred in both daiva and effort '. Vide Rājanītiprakāśa pp. 312-315 and Nītimayūkha pp. 52-53 for further remarks on daiva and effort. In one place the Mahābhārata (Udyoga 127. 19) contains the bravest and loftiest advice ' man should always press forward (make efforts), should never bend; striving is manliness; one may even break at a point which is not the joint, but should never bend '[216]. The Bṛhat-Parāśara-smṛti X pp. 282-283 contains a long discourse on daiva and puruṣakāra. Vide Vāyu 9. 60-61 and Mārk. purāṇa 2. 61-62 and 23. 25-26 for similar passages on daiva and effort.

An important doctrine of the writers on Arthaśāstra is more or less based on the necessity of *utsāha*, viz. the doctrine of three

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215. स्वमेव कर्म दैवाख्यं विद्धि देहान्तरार्जितम्। तस्मात्पौरुषमेवेह श्रेष्ठमाहुर्मनीषिणः॥ मत्स्य 221. 2; धीमन्तो वन्द्यचरिता मन्यन्ते पौरुषं महत्। अशक्ताः पौरुषं कर्तुं क्लीबा दैवमुपासते॥ दैवे पुरुषकारे च खलु सर्वं प्रतिष्ठितम्। शुक्र॰ I. 48-49; अस्ति कस्यचित्सुभाषितम्। हीनाः पुरुषकारेण गणयन्ति ग्रहस्थितिम्। सत्त्वोद्यमसमर्थानां नासाध्यं व्यवसायिनाम्॥ मेधा॰ on मनु IV. 137.

216. उद्यच्छेदेव न नमेदुद्यमो ह्येव पौरुषम्। अप्यपर्वणि भज्येत न नमेदिह कर्हिचित्॥ उद्योग 127. 19.

śaktis, i. e. of *utsāha*, *prabhu* (or *prabhāva*) and *mantra*. These three occur in the Mahābhārata (Āśramavāsika 7. 6). The S. V. p. 46 quotes a sūtra of Gautama (not found in the printed Dh. S.) 'the three śaktis, viz. prabhu, mantra and utsāha are based on that (kośa)'.[216a] In VI. 2 Kauṭilya defines *mantra-śakti* as the power of the knowledge (of statecraft), *prabhuśakti* as the power of treasury and army and *utsāhaśakti* as the force of the king's bravery.[217] Kauṭilya (IX. 1) holds a discussion about the relative superiority of these three and gives it as his opinion (as against that of the ācāryas) that prabhuśakti is superior to utsāhaśakti and that mantraśakti is superior to prabhuśakti. Kām. XV. 32 defines[218] the three thus: 'the employment of the proper line of policy out of the six *upāyas* (sandhi, vigraha &c.) is called mantraśakti; a full treasury and army constitute prabhuśakti and activity of the strong is called utsāhaśakti; the king possessed of all these three becomes the conqueror.' The Nītivākyāmṛta (ṣāḍguṇyasamuddeśa) p. 322 defines them in the same way.[219] According to the Daśakumāracarita[220] VIII the goal (or purpose) of a king is determined by mantra (consultation with ministers about policy), commencement of actions (for securing the goal) is due to prabhāva and the successful termination of undertakings is brought about by energy. The Paraśurāmapratāpa (folio 15a) quotes a verse which defines 'prabhuśakti' differently viz. as the power to command. Vide also Agnipurāṇa 241. 1, Mānasollāsa II. 8-10 pp. 91-94. Kām. (XIII. 41-58) brings together the numerous activities of the king.

A king endowed with valour has to employ several means (upāyas) to extend his dominions and to keep his hold on his own people. According to the Rāmāyaṇa V. 41. 2-3, Manu VII. 109, Yāj. I. 346, Śukra IV. 1. 27 and others the

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216a. अत एव गौतमसूत्रम् । प्रभुमन्त्रोत्साहशक्तयस्तन्मूलाः इति । तन्मूलाः कोशमूला इत्यर्थः । स. वि. p. 46.

217. शक्तिस्त्रिविधा ज्ञानबलं मन्त्रशक्तिः कोशबलं प्रभुशक्तिः विक्रमबलमुत्साहशक्तिः। अर्थशास्त्र VI. 2. p. 261.

218. मन्त्रस्य शक्तिं सुनयोपचारं सुकोशदण्डौ प्रभुशक्तिमाहुः । उत्साहशक्तिं बलवद्विचेष्टां त्रिशक्तियुक्तो भवतीह जेता ॥ कामन्दकीय० XV. 32.

219. कोशदण्डबलं प्रभुशक्तिः । शूद्रशक्तिकुमारौ दृष्टान्तौ । विक्रमो बलं चोत्साहशक्तिस्तत्र रामो दृष्टान्तः । नीतिवाक्यामृत pp. 322-323.

220 मन्त्रेण हि विनिश्चयोऽर्थानां प्रभावेण प्रारम्भः उत्साहेन निर्वहणम् । दशकुमारचरित VIII. p. 144 (Bom S. S. ed. of 1919); आज्ञारूपेण या शक्तिः सर्वेषां मूर्धनि स्थिता । प्रभुशक्तिर्हि सा ज्ञेया सप्रभामाहिमोदया ॥ q. by परशु प्र. (राजवल्लभकाण्ड folio 15 a). Vide पञ्चतन्त्र III. 30 'उत्साहशक्तिसंपन्नो हन्यात्शत्रुं लघुर्गुरुम् ।'

upāyas are four viz. sāma (conciliation), dāna (giving gifts or presents), bheda (causing dissensions) and daṇḍa (punishment or depriving of property or causing bodily harm).[221] In the Hāthigumphā Inscription, the king Khāravela (latter half of 2nd century B. C.) states that in the 10th year of his reign he sent, following the policy of daṇḍa, sandhi and sāma, an expedition against Bharatvarṣa, conquered that land and obtained jewels and precious things (E. I. vol. XX pp. 79, 88). This shows that the theory of the upāyas must have been evolved several centuries before the Christian era. Some others such as Kām. XVII. 3, Matsya 222. 2, Agnipurāṇa 226. 5–6, Bārhaspatyasūtra V. 1–3, Viṣṇudharmottara II. 146–149 add three more to the above four. Sabhā 5. 21 mentions the number seven and Vanaparva 150. 42 mentions sāma, dāna, bheda, daṇḍa and upekṣā. About the additional three there is some difference of opinion, most holding that the three are *māyā*, *upekṣā* and *indrajāla* (Kām., Agnipurāṇa), while the Bārhaspatyasūtra (V. 263) says they are māyā, upekṣā and vadha and others say they that are māyā, akṣa (dice) and indrajāla (Sarasvatīvilāsa p. 42). Māyā means 'deceitful trick'. The Viṣṇudharmottara II. 148 gives illustrations, such as tying a firebrand to the tail of a bird that often perches on the enemy's camp to produce the delusion that a meteor (an evil omen) fell down from the sky. Kām. XVII. 54 cites the example of Bhīma's meeting Kīcaka dressed as Draupadī. Kām. (XVII. 51–53) gives other examples of māyā. *Upekṣā* consists in not preventing a person from doing what is unjust or being addicted to some vice or engaging in a fight and is illustrated by king Virāṭa's connivance at the death of Kīcaka (Kām. XVII. 55–57). Indrajāla means 'creating an illusion by means of incantations and other tricks' e. g. creating the illusion before the eyes of the enemy that a vast army is coming to attack them or showing that angels are descending to fight against them or making a shower of blood fall in the enemy's camp etc. (Kām. XVII. 58–59, Viṣṇudharmottara II. 149). About the four well-known *upāyas*, Manu (VII. 108–109) says that for the prosperity of one's kingdom sāma and daṇḍa (punishment) are preferred, but if

221. अल्पशेषमिदं कार्यं दृष्टेयमसितेक्षणा। त्रीनुपायानतिक्रम्य चतुर्थ इह दृश्यते॥ न साम रक्षःसु गुणाय कल्पते न दानमर्थोपचितेषु युज्यते। न भेदसाध्या बलदर्पिता जनाः पराक्रमस्त्वेव ममेह रोचते॥ सुन्दरकाण्ड 41. 2–3; उपायोपपन्नविक्रमोऽनुरक्तप्रकृतिरल्पदेशोऽपि भूपतिर्भवति सार्वभौमः। न हि कुलागता कस्यापि भूमिः किन्तु वीरभोग्या वसुन्धरा। सामोपप्रदानभेददण्डा उपायाः। नीतिवाक्यामृत p. 332.

the king's antagonists do not yield to him by the employment of the first three then he may bring them round by daṇḍa (i. e. fighting and harassing them) and that (VII. 198, 200) daṇḍa is to be employed as the last resort, since victory is not certain. In the Śāntiparva 69. 23 the view of Bṛhaspati is quoted[222] that fighting should always be avoided (as far as possible) and that for securing one's purpose three upāyas (other than fighting) are to be resorted to. Bṛhat-Parāśara X p. 280 also says that a wise man should not resort to fighting and that daṇḍa is to be resorted to only when there is no other course left. In Udyoga 132. 29-30 (cr. ed. chap. 130) Kuntī sends a message through Kṛṣṇa to her son : ' begging is forbidden to you nor is agriculture appropriate for you ; you are a kṣatriya living by the power of his arms and a protector against injury (kṣatāt trātā). Recover your ancestral share by sāma, dāna, bheda, daṇḍa and naya '. In Udyoga 150 (cr. ed. 148) Kṛṣṇa informs Yudhisṭhira how he first employed sāma, then bheda, then dāna (viz. giving up the whole kingdom for five villages) and how only daṇḍa is the proper recourse in the case of the wicked Kauravas. Hopkins, as very often, being obsessed with his ideas of three strata in the Mahābhārata says that three means appear to be the oldest form and four means a later idea. There is hardly any warrant for this opinion as for many others in the same strain (J. A. O. S. vol. XIII. pp. 182-183 n). The Viṣṇudharmottara II. 146 speaks of the four upāyas and states that daṇḍa as regards a foreign state is open (prakāśa) i. e. burning and not-open (aprakāśa i. e. by poison or secret death). The Mit. on Yāj. I. 346 and Kām. XVIII. 1 say the same thing. The Viṣṇudharmasūtra III. 38 prescribes that the four upāyas are to be employed at the proper time and according to the attitudes of the hostile king, friendly king, the *madhyama* and *udāsīna* kings[223]. The Mit. on Yāj. I. 346 expressly states that the four upāyas are to be employed not only in the affairs between kings but also in the lives of all ordinary people and cites a verse wherein a father or teacher addresses a son or pupil making use of all four means[224]. Kām. XVII, Mānsollāsa II.

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222. वर्जनीयं सदा युद्धं राज्यकामेन धीमता। उपायैस्त्रिभिरादानमर्थस्याह बृहस्पतिः ॥ शान्ति 69. 23; न युद्धमाश्रयेत्प्राज्ञो न कुर्यात् स्वबलक्षयम् ।... वदन्ति सर्वे नीतिज्ञा दण्डस्त्वगतिका गतिः । बृहत्पराशर ; दण्डस्त्वगतिका गतिः is the last पाद of या. I. 346.

223. शत्रुमित्रोदासीनमध्यमेषु सामभेददानदण्डान् यथार्हं यथाकालं प्रयुञ्जीत । विष्णुधर्मसूत्र III. 38.

224. एते सामादयो न केवलं राजव्यवहारविषयाः अपि तु सकललोकव्यवहारविषयाः । यथा—अधीष्व पुत्रकाधीष्व दास्यामि तव मोदकान् । यद्वान्यस्मै प्रदास्यामि कर्णमुत्पाटयामि ते ॥ इति । मिता. on या. I. 346.

17–20 verses 972 ff (pp. 117–122), Nītivākyāmṛta pp. 332–336 treat at length of these four upāyas. A few points only are noted here. Sāma is of five kinds viz. recounting the good turns done by each to the other; praising the qualities and actions of the persons to be won over; declaring the relationship of each other; representing the good that will result in future; declaring 'I am yours and I am at your service' (Kām. XVII. 4–5). Dāna consists in returning what is deposited with one by another, consenting to the taking away by another of one's things, making a gift of something new, giving what the other chooses to ask for, sending at fixed times what has to be given. *Bheda* (sowing dissensions) consists in giving heavy bribes or presents to ministers or feudatories, the crown prince and high officers of the enemy that are dissatisfied for various reasons, creating distrust between the king and his ministers, the rich men and the handsome men in the kingdom by the threat of the loss of life, honour, position, and wealth, by the fear of imprisonment, by the fear that the king may carry away the beautiful wife of a subject or by suggesting that a handsome young man has his eye on the king's harem, and suggesting to a king that a kinsman desires to secure the kingdom to himself and thereby inducing the king to put out his eyes or cut off his limbs. This is effected by secret spies or persons who are in the pay of both kings (*ubhayavetana*, acc. to Mānasollāsa p. 119 v. 995)[225]. Vide Kauṭ. XI. 1, Matsya chap. 225 and Śukra IV. 1. 25–54 for *bheda*, Kauṭ. XI. 1 explains at length how an aspiring conqueror is to sow dissensions between corporations and the leaders of corporations, between chiefs and other people. One or two passages may be quoted by way of sample: "Spies gaining access to these corporations (of warriors and others) and finding out jealousy, hatred and other causes of quarrel among them should sow seeds of a well-planned dissension among them, and tell one of them 'this man decries you'. Spies may give publicity to the consideration of priority shown to inferior persons in social intercourse in the face of the established custom of recognising the status of other persons by birth, bravery, and social position. In all these disputes the conqueror should help the inferior party with men and money and set them against the superior party. A woman who has disappointed her lover and has been for-

225. शत्रुस्थैरात्मपुरुषैरुभयवेतनैः । भीतापमानितान् क्रुद्धान् भेदयेच्च वसद्गतान् प्राणापहो मानभङ्गो धनहानिश्च बन्धकः । दाराभिलाषोऽङ्गभङ्ग इति भेदोऽत्र बहुविधः मानसोल्लास II. 18, verses 988–989 p. 118.

given may approach and say to a chief 'this chief is troubling me when my mind is set on you; when he is alive I cannot stay here' and thus induce the former to slay the latter." The Matsyapurāṇa 223. 4 states that united people are more than a match even for Indra unless bheda is employed, that dissensions are of two kinds, internal and external, of which the former is more serious. External dissension means the quarrel with a chief, but internal dissension means dissension between a king and his queen or heir apparent or ministers. One should try to prevent dissension with one's own relatives. Śānti 69. 23 also advises the conquest of territory by fomenting dissensions. Therefore the expedient of '*divide et impera*' has a respectable antiquity. Daṇḍa in the case of a king's country consists in sentencing to death or corporal punishment or fine and in the case of the enemy in fighting, destroying or devastating his country by seizing his crops and grain, cattle, wealth, forts and in imprisoning and injuring his people, burning his villages and forests.

There were certain privileges that the king enjoyed. His rights to treasure trove have already been referred to (H. Dh. vol. II, p. 146). Kauṭ. (IV. 1) gives the following rules. The person giving information about the discovery of a mine, jewels or treasure trove gets one-sixth, but if the informer be a servant of the king he gets $\frac{1}{12}$; treasure trove beyond 100000 paṇas went to the king wholly (the finder being entitled to a $\frac{1}{6}$th share only up to 100000 paṇas of the whole); a subject who can prove that the treasure trove belonged to his ancestors would get the whole of it; if he takes it without establishing his ancestral ownership he is to be fined 500 paṇas and 1000 paṇas if he appropriated it secretly. The king also took by escheat the property of a person dying without leaving any heir except in the case of brāhmaṇas (vide H. Dh. II, p. 146 where some authorities are cited). This subject will be dealt with at greater length under the next section on 'law and justice'. The king was also entitled to all property that was lost or given up by the true owner. Vide Gaut.[226] X. 36–38, Vas. 16. 19, Manu VIII. 30–33, Yāj. II. 33, 173–174, Śaṅkha-Likhita. Gaut. and Baud. Dh. S. (I. 10. 17) say that the king should preserve for one year articles found after proclaiming the finding by beat of drum, while Manu says that

226. प्रणष्टमस्वामिकमधिगम्य राज्ञे प्रब्रूयुः। विख्याप्य संवत्सरं राज्ञा रक्ष्यम्। ऊर्ध्वमधिगन्तुश्चतुर्थं राज्ञः शेषः। गौ. X. 36–38; प्रणष्टस्वामिकानि राजगामीनि भवन्ति। शङ्खलिखित quoted in वि. र. p. 599

the period is three years. The Mit. on Yāj. II. 33 reconciles these texts by saying that if the true owner comes to the king and establishes his ownership he gets back the entire article without paying anything for safe custody, if the owner comes in the 2nd year he pays 1/12 of the price for custody, if in the third year he pays 1/10 and 1/8 if he comes after three years. The finder gets 1/4 out of the share taken by the king. If the owner does not come at all the finder gets 1/4 and the king the rest. The king may dispose of the article if none claims it within that period, but if the owner comes after three years and the article has been disposed off, the king should return the equivalent of the portion taken by him. Yāj. II. 174 specifies other scales of charges for the custody of unclaimed animals such as four paṇas for a horse &c. Another special privilege of the king was that he could not be cited as a witness in a judicial proceeding between private parties. Vide Kauṭ. III. 11 (p. 175), Manu VIII. 65, Viṣṇudharma-sūtra 8. 2.

Constitutionally there was no one who could directly bring to book the king guilty of injustice. But the Dharmaśāstra writers insisted that *dharma* was the king of kings (Bṛ. Up. I. 4. 14 quoted above p. 97 n. 125), that Varuṇa was the chastiser of kings (Manu IX. 245); therefore they appealed to the higher nature and conscience of the king and prescribed that if a king levied an unjust fine, he should offer thirty times of that amount to Varuṇa, throw the amount in water or distribute it among brāhmaṇas (Yāj. II. 307) and that where an ordinary man would incur a fine of one kārṣāpaṇa for a wrong, the king certainly deserves to be fined a thousand kārṣāpaṇas (Manu VIII. 336). The remarks of Medhātithi on that verse quoted below are very interesting, when he insists on the principle that fines for the same wrong should vary with the capacity to pay[227]. Even Kauṭilya (IV. 13 last two verses) falls in line with Manu IX. 245 and Yāj. II. 307. But these prescriptions of Manu, Yāj. and Kauṭ. were counsels of perfection and must have been futile. No king would ordinarily fine himself. Therefore some medieval

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227. महाधनत्वादल्पं दण्डं न विगणयेद्राजा । अधिकृतानां मन्त्रिपुरोहितादीनामनयैव कल्पनया न्यूनाधिकभावः । धनदण्डश्च ब्राह्मणेभ्योऽप्सु प्रवेशनेन वरुणाय वा यो तावद्दद्याति (यस्तावद् ?) राज्ञां दण्डधरो हि सः । मेधा० on मनु VIII. 336. Compare अदण्ड्यदण्डने राज्ञो दण्डस्त्रिंशद्गुणोऽम्भसि । वरुणाय प्रदातव्यो ब्राह्मणेभ्यस्ततः परम् ॥ तेन तत्पूयते पापं राज्ञो दण्डापचारजम् । शास्ता हि वरुणो राज्ञां मिथ्या व्याचरतां नृषु ॥ कौटिल्य IV. 13 last two verses. तस्माद्राज्ञामप्यन्तरनरपतीनामिति रत्नाकरोक्तमेव न्याय (उपाय ?) इति द्रष्टव्यम् । स्वस्य स्वयं दण्डनानुपपत्तेः । दण्डविवेक p. 55.

digests like the Vivādaratnākara and the Daṇḍaviveka (p. 55) interpret these texts as meaning that the word 'rājan' applies here only to subordinate chiefs and not to a king who is independent.

The flourishing state of a kingdom well governed by a good, well-equipped and active king is very graphically described in the Rāmāyaṇa (II. 100. 43–46) 'I hope your country is full of hundreds of *caityas* (platforms for sacred trees) and of people who are well-placed; is rendered charming by temples, *prapās* (sheds where water is distributed to travellers *gratis*) and tanks; in which men and women are joyful: which is set off to advantage by merry gatherings and festivals; the whole extent of which is well cultivated; which is full of cattle and free from injury (to beings); which does not depend upon rains alone (for its crops); which is beautiful, free from beasts of prey and all kinds of dangers; which is endowed with mines; which is free from wicked men and enjoys prosperity and happiness'. The Ādiparva chap. 109 (cr. ed. chap. 102) also contains a fine description of a well-governed and prosperous country. The country was to be full of public wells, gardens and meeting-halls (sabhā). The Viṣṇu-dharmottara I. 13. 2–12 contains an ideal description of ancient Ayodhyā. 'It was endowed with hundreds of parks; it celebrated festivals and held gatherings of people; its population was free from disease and had valiant men; it always resounded with the music of lutes, flutes and tabors; it had fair complexioned, charming *hetarai* clever in brilliant conversation; its population was always gay; it resounded with the recitation of the Veda and was endowed with companies of brāhmaṇas; its market rows were full of men that had applied scents to their bodies; there was not a man there who was wretched, dirty or emaciated; it stretched for three yojanas on the bank of the Śarayū and was ten yojanas in the middle.'

CHAPTER VI

DURGA (FORT OR CAPITAL)

Manu IX. 294 places the capital (pura) even before rāṣṭra. Medhātithi (on IX. 295) and Kullūka explain that the loss of the capital is a more serious danger than even the loss of some territory, because if the capital, which possesses all the stocks of food, in which are centred the principal elements and the army, is saved, then it is possible to retrieve even lost territory and to protect the country. It is as it were the pivot of the whole machinery of government. Other writers (and even Manu in VII. 69–70) place the capital or fort after the rāṣṭra. It is probably due to the geographical situation in North India and the nature of the fighting in ancient times that made the capital and forts of great importance in the several elements of the State. The capital mirrored the prosperity of the country and if properly walled also provided security. Yāj. I. 321 says that forts are meant for the safety of the king, the people and the treasury (*janakośātmaguptaye*). The reason for the construction of forts is well put by Manu VII. 74 viz. that a single archer under the shelter of the fort-wall can fight a hundred of the enemy and a hundred can fight ten thousand. The Pañcatantra (I. 229 and II. 14) has a similar verse. Bṛhaspati quoted by the Rājanītiprakāśa[228] p. 202 states that the king should construct a fort with walls and a gate for the protection of himself, his wives, the people and the (wealth) collected by him. Kauṭ. (II. 3 and 4) deals at length with the construction of durgas and the laying out of the capital in one of them. He says that in the four quarters of the boundaries of the kingdom forts should be built for offering resistance (to the enemy) on ground naturally fitted for the purpose. He speaks of four kinds of forts viz. '*audaka*' (water-protected, which is on an island surrounded by water or on a plain surrounded by low ground), *pārvata* (mountain one, such as a rocky hill or a cave), *dhānvana* (desert fort, on a waterless tract full of thickets or waste land), a forest fort full of wagtails and water and

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228. बृहस्पतिराह । आत्मदारार्थलोकानां सञ्चितानां तु गुप्तये । नृपतिः कारयेद्दुर्गं प्राकारद्वारसंयुतम् ॥ राजनी. प्र. p. 202 and राजधर्मकाण्ड p. 28.

thickets of reed. He says that the first two are suited for the protection of populous places and the last two for the protection of foresters. Vāyu 8. 108 refers to four kinds of durgas. Manu VII. 70, Śānti 56. 35 and 86. 4–5, Viṣṇudharmasūtra III. 6, Matsya 217. 6–7, Agnipurāṇa 222. 4–5, Viṣṇudharmottara II. 26. 6–9, III. 323. 16–21, Śukra IV. 6 speak of six kinds of forts viz. dhanvadurga (which is waterless five yojanas round a raised plain), mahīdurga (a land fort, which is surrounded by a wall built of stones or burnt bricks, that is at least twelve feet high and twice as high as it is broad), jaladurga (water fort, surrounded on all sides by deep water), vārkṣa durga (fort that is surrounded for one yojana on all sides with thorny and tall trees and thorny creepers and bushes), nṛdurga (fort that is guarded by a numerous army of four sections on all sides), giridurga (mountain fortress, difficult to climb and with only one narrow access). Manu VII. 71 says that the mountain fortress is the best of all, while Śānti 56. 35 states that nṛdurga is the most difficult to conquer. The Mānasollāsa (II. 5 p. 78) speaks of nine kinds of durgas (adding those built with stones, bricks and mud). The Paraśurāma-pratāpa enumerates eight kinds of durgas (Rājavallabhakāṇḍa, folio 1) and states that the wall of a fort may be of stones or of baked bricks or of mud. Manu VII. 75-Sabhā 5. 36 (=Ayodhyā 100. 53), Matsya 217. 8, Kām. IV. 60, Mānasollāsa III. 5 (verses 550–555), Śukra IV. 6. 12–13, Viṣṇu' dharmottara II. 26. 20–88 prescribe that forts should possess plenty of arms, grain, drugs and other materials, wealth, horses, elephants, beasts of burden, brāhmaṇas, artisans, machines (called Śataghnīs acc. to Matsya, that kill a hundred), water and fodder. The Nītivākyāmṛta (durga-samuddeśa p. 199) says that there must be means of leaving it secretly, otherwise it will be a prison and that no one should be allowed to enter it or leave it without a pass or without being searched. Kauṭ. (II. 3) gives detailed instructions for the construction of fort walls, towers, ditches, pillars, lotus ponds and buildings inside the fort, which are all passed over for want of space. Vide the Rājadharmakāṇḍa pp. 28–36 and the Rājadharmakaustubha pp. 115–117 for numerous quotations from the Dhanurveda of Uśanas, the Mahābhārata, the Matsya, the Viṣṇudharmottara and other works on *durga*.

In the Ṛgveda we have frequent mention of cities. In I. 63. 7 Indra is said to have shattered seven cities for Purukutsa

and in II. 20. 8 it is narrated that Indra killed the dasyus and destroyed their cities of *ayas* (copper, *hatvī dasyūn pura āyasīr ni tārīt*). This shows that walled cities were known even at that distant date. There is difference of opinion as to whether the walls were of mud and wood or of stones and bricks. Vide Hopkins in J. A. O. S. XIII. pp. 174-176. The Tai. S. VI. 2. 3. 1 speaks of the three cities of asuras constructed with *ayas*, silver and gold (*hariṇī*). In the *agnicayana* as described in the Śat. Br. thousands of baked bricks were required. The excavations at Mohenjo-daro show that walls were built of burnt bricks (Marshall, vol. 1. pp. 15-26). There is no reason to assume that houses, palaces and city walls could not have been built of bricks, simply because no purely Hindu ruins anterior to Alexander have yet been discovered or because Megasthenes describes that Pāṭaliputra had a wall of wooden palisades. One must demur to the remarks of Hopkins on pp. 174-175 of J. A. O. S. vol. XIII. Walls (prākāra), toraṇas (arched gates) and upper stories (aṭṭālakas), moats are very often spoken of in connection with capitals in both epics. The gates were sometimes called after cities e. g. in Vanaparva I. 9-10 the Pāṇḍavas are said to have gone out of Hastināpura from the gate called Vardhamānapura.[229] Vide also Āśramavāsiparva 16. 3. The Mahābhārata states that palaces had dancing halls (nartanāgāra) attached to them (Virāṭa-parva 22. 16 and 25-26). Śānti 69. 60 states that the capital was rendered gay by naṭas (players) and dancers and Śānti 86 (4-15) describes how cities were to be founded in durgas, how they were to be full of music, festivals and merry gatherings (*samājotsava*) and what stores they should contain. In the Rāmāyaṇa (V. 2. 50-53) Laṅkā is described as having palaces of seven or eight stories and mosaic pavements. The Bṛhatsaṁhitā (chap. 53) contains in 125 verses very accurate directions and measurements about palaces, houses &c. (i. e. on vāstuśāstra). It states that the best kind of royal palace was to be 108 cubits broad, that palaces of 100, 92, 84, 76 cubits may be built, that the length in each case was to be one-fourth as much more as the breadth. It speaks of the dimensions of mansions for the commander-in-chief, ministers, the queen, crown prince, purohita, physician &c. In v. 23 it states that the walls may be of baked bricks or of wood.

229. वर्धमानपुरद्वाराद्भिनिष्क्रम्य पाण्डवाः । उदङ्मुखाः शस्त्रभृतः प्रययुः सह कृष्णया ॥ वनपर्व 1. 10; स वर्धमानद्वारेण निर्ययौ गजसाह्वयात् । आश्रमवासि 16. 3.

The king was to have his capital inside a fort or independent of it. Manu VII. 70, 76, Āśramavāsi 5. 16–17, Śānti 86. 6–10, Kām. IV. 57, Matsya 217. 9ff, Śukra I. 213–217 describe where and how a capital was to be built. Kauṭilya (in II. 4) describes at great length how the capital was to be laid out viz. the extent should be demarcated by three royal roads from west to east and three from south to north, the capital should have twelve gates, provided with concealed land and water exits : the chariot roads, the royal roads and roads leading to droṇa-mukha, sthānīya, the rāṣṭra and pastures should be four daṇḍas (16 cubits) in width. He then prescribes the width of roads for various other purposes. Occupying one-ninth of the whole area of the capital, but to the north from the centre of the capital and in the midst of people of all castes the king's own palace should be built facing the east or north. To the north-east of the palace should be the residences of the king's teacher (ācārya), purohita, ministers and the sacrificial place and water reservoir. He then assigns appropriate places round about the palace for the offices of the several superintendents, to merchants, principal artisans, brāhmaṇas, kṣatriyas, vaiśyas, prostitutes, wool workers, śūdras &c. In the centre of the capital were to be constructed apartments for the images of Aparājita, Apratihata, Jayanta and Vaijayanta and the temples of Śiva, Kubera, the Aśvins, Lakṣmī and Madirā (Durgā ?). The principal gates named after Brahmā, Yama, Indra and Kārtikeya were to be constructed. At a distance of 100 bows (400 cubits) beyond the ditch, platforms for holy trees, groves and embankments should be built. The cemetery should be to the east or north but to the south for the higher varṇas. Heretics and cāṇḍālas should have a place of residence beyond the cemetery. For each group of ten families there must be a well ; oil, grain, sugar, salt, medicines, dried vegetables, fire-wood, arms, and other essential commodities should be stored in such large quantities that they might last for several years in case of a siege or invasion. The Matsyapurāṇa (217. 9–87) differs from the above description in many ways. It prescribes four wide roads, at the ends of which a temple, the royal palace, the court of justice and the principal gate are to be respectively constructed. Almost the whole of the description in the Matsya is quoted by the Rājanītiprakāśa (pp. 208–213) and also in the Rājadharmakāṇḍa pp. 28–36. The former also quotes (pp. 214–219) a long passage from the Devīpurāṇa with regard to the construction of a *nagara*,

a *pura*, a *haṭṭa* (market), a *purī*, a *pattana*[230] and the temples of several deities that are to be built in each, the rites to be observed in measuring out the ground for each and accurately finding out of the east and other directions. Pāṇini (VII. 3. 14 prācām grāmanagarāṇām) distinguishes between grāma and nagara, while Patañjali thereon (vol. III. p. 321) explains that grāma, ghoṣa, nagara, and saṁvāha are the appellations of different groups or settlements of people. The Vāyupurāṇa (94. 40) separately mentions cities (purāṇi) ghoṣas (hamlets of cowherds), villages and pattanas. Vide Śukranītisāra I. 213–258 for provisions about the laying out of the capital, the palace, the court of justice, other state offices and public buildings, ditches &c. and Yuktikalpataru pp. 22 ff, Vāyu 8. 108 ff, Matsya 130. Śukra (I. 260–267) describes how four royal roads should start from the palace in four directions, how the best, middling and inferior royal roads should be 30, 20 and 15 cubits in breadth; he defines *padyā* (a foot-path), *vīthi* (a lane) and *mārga* as respectively equal to 3, 5 and 10 cubits in breadth, that in the capital there should be no narrow street like a padyā or vīthi, that even in villages the public road should be at least 10 cubits in width, that all roads should slope down from their middle and that all houses should face the royal road. For a description of Ayodhyā vide Rāmāyaṇa II. 100. 40–42, which says that it was full of valiant men, had strong gates, was full of elephants, horses, and chariots, was inhabited by energetic people of all castes that were devoted to their duties, that had mansions of various sizes, that it was prosperous and had many physicians. From the Rāmāyaṇa (VI. 112. 42 *siktarathyāntarāpaṇā*) and the Mahābhārata (Ādi. 221. 36) it appears that the roads of the capital were watered. In the Harṣacarita (III) Bāṇa gives a graphic description of Sthāṇvīśvara (modern Thanesar). For the local administration of the capital, vide the duties of the nāgaraka described above (p. 149) from Kauṭilya (II. 36). From the Paharpur plates (dated Gupta saṁvat 159 i. e. 478–9 A. D.) it appears that a nagara-śreṣṭhin (the chief of the bankers and traders of the capital) was nominated (probably by the king). Vide E. I. vol. 20 p. 59 at p. 61. There was probably a board of the elders of the city (pauramukhyas or pauravṛddhas

230. Compare ग्रामा वृत्त्यादिशून्याः, पुरो वृत्त्यादिमत्यः ता एव महत्यः पत्तनानि, द्रोणाण्यौदकादीनि। खेटाः कर्षकग्रामाः। खर्वटाः पर्वतप्रान्तग्रामा इति। श्रीधर on भागवत IV. 18. 31 q. in राजनीतिकौ. p. 102. The शिल्परत्न (chap. V) defines ग्राम, खेटक, खर्वट, दुर्ग, नगर, राजधानी, पत्तन, द्रोणिक, शिबिर, स्कन्धावार, स्थानीय, विडम्बक, निगम, शाखानगर in all 14 (Tri. ed.). The मयमत (X. 92) speaks of ten of these and IX. 10 gives the extent of ग्राम, खेट, खर्वट, दुर्ग, नगर.

as in Kauṭilya) appointed to help the Governor of the capital (*nāgaraka*) in administration. In the Damodarpur copper plates also a nagaraśreṣṭhin is mentioned along with others who were approached for consenting to a purchase of land (E. I. vol. XV at pp. 130, 133, dated Gupta saṁvat 129). Megasthenes (in McCrindle's ' Ancient India ', Fragment XXXIV p. 187) describes the city of Palibothra (Pāṭaliputra) and its administration. He says that six committees of five each looked to the affairs of the city and were respectively in charge of (1) industrial arts, (2) entertainment and care of foreigners, (3) inquiries about births and deaths, (4) trade and commerce, weights and measures, (5) manufactured articles, (6) collection of the 10th of the prices of articles sold. Fragments XXV-XXVI (pp. 65-67) inform us that Palibothra was 80 *stadia* in length and 15 in width, that in shape it was a parallelogram, that it was surrounded by a wooden wall with holes for discharging arrows and a ditch in front. Arrian states (pp. 209-210 of McCrindle's ' Ancient India ') that Palibothra had 570 towers and 64 gates. Patañjali in his Mahābhāṣya frequently brings in Pāṭaliputra (e. g. in vol. I p. 380 he states that Pāṭaliputra is alongside of the river Śoṇa, on Pāṇ. II. 1. 16), in vol. II. p. 311 (vārtika 4 on Pāṇ. IV. 3. 66) he refers to its walls and to its palaces, in vol. II. p. 321 (on Pāṇ. IV. 3. 134). In Fa-Hien's time (399-414 A. D.) the royal palace and halls in the midst of the city built of stone still existed and were so grand that they were then believed to have been the work of spirits (vide Legge p. 77). Vide Rhys Davids' ' Buddhist India ' pp. 34-41 for the ancient Indian capitals in the 7th century B. C.

In the Bhāgavatapurāṇa (IV. 18. 30-32) it is narrated that Pṛthu, son of Vena, first levelled the earth, established human habitations in villages, towns, capitals, forts &c., and that before Pṛthu people resided where they liked and there were no such groups as villages or towns. Bhṛgu quoted by Śrīdhara according to Rājanīti-kaustubha defines grāma as the habitation of brāhmaṇas, their hired labourers and śūdras, that kharvaṭa is on the bank of a river and of a mixed character, one side being a village and the other a town. Śaunaka quoted by the Rājanīti-kaustubha (pp. 103-4) defines kheṭa as a place where brāhmaṇas, kṣatriyas and vaiśyas reside, that a place where all castes reside is called a town, that brāhmaṇa householders should be established on soil that is whitish and has sweet odour, kṣatriyas should be established in towns where the soil is reddish and wafts a sweet odour and vaiśyas on yellowish soil.

CHAPTER VII

KOSA (TREASURY OR FINANCE)

Kauṭ. (II. 1) states that a king whose treasury is depleted preys upon the citizens and the rural population and (II. 8) very[231] rightly remarks that all undertakings depend upon kośa (financial position of the king), therefore the king must pay the first attention to kośa. Gautama (as cited by S. V. p. 46) holds that kośa is the basis or support of the other six elements of the State. The Śāntiparva 119. 16 calls upon the king to guard his finances with great effort, since kings depend upon kośa, which tends to the prosperity (of the kingdom). Kām. XIII. 33 states that it is on the lips of all that the king is dependent on kośa. Śānti 133 contains a eulogy of kośa. The Viṣṇudharmottara II. 61. 17 says that kośa is the root of the tree of State. The two great pillars of the Indian States in ancient India were the revenue and the army. Manu VII. 65 says that kośa and the government of the realm depend on the king i. e. they should be the personal concern of the king. Yāj. (I. 327-328) recommends that the king should personally look into the income and expenditure every day and keep in his treasury buildings whatever is brought by those who are appointed to bring gold and wealth. Kām. V. 77 and Śukra I. 276-278 say the same. The Rājataraṅgiṇī (VII. 507-508) tells us that king Kalaśa of Kashmir (1063-1089 A. D.) kept accounts like a merchant, closely watched income and expenditure and had a clerk by his side with chalk and *bhūrja* (birch leaf) to write upon. The principal means of filling the treasury is taxation. It is therefore necessary to consider first the principles of taxation as evolved by our writers. The first principle was that the king could not levy, according to the smṛtis, taxes at his pleasure or sweet will, that the rates of taxes which the king was entitled to levy were fixed by the smṛtis and varied only according to the

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231. कोशमूलाः कोशपूर्वाः सर्वारम्भाः । तस्मात्पूर्वं कोशमवेक्षेत । कौटिल्य II. 2; कोशश्च सततं रक्ष्यो यत्नमास्थाय राजभिः । कोशमूला हि राजानः कोशो वृद्धिकरो भवेत् ॥ शान्ति 119. 16; कोशमूलो हि राजेति प्रवादः सार्वलौकिकः । कामन्दक XIII. 33. This last occurs in बृधसू. p. 36; कोशस्तु सर्वथा अभिसंरक्ष्य इत्याह गौतमः । तन्मूलत्वादन्यप्रकृतीनामिति । स. वि. p. 46.

commodity and also according as the times were normal or there was danger of invasion or some other calamity impending. For example, Gaut. X. 24, Manu VII. 130, Viṣṇu Dh. S. III. 22–23 declare that the king may ordinarily take a sixth part of the grain-crops or produce of the soil, but Kauṭ. (V. 2), Manu (X. 118), Śānti 87, Śukra IV. 2. 9–10 permit the king to take even one-third or one-fourth part of the crops in times of distress (*āpad*). It has however to be noted that Kauṭilya requires the king to beg (*yāceta*) of the people for this heavy taxation, he employs the word *praṇaya* (request) for such demands, such taxation was not to be levied from inferior lands, and he expressly says that such a demand for excessive taxation is to be made only once and not twice in the same distress.[232] Śānti (87. 26–33) contains a specimen of a long address to be given to the people when a king demands higher taxation in danger (such as ' if the enemy invades you, you will lose all including even your wives, the enemy will not restore to you what he robs you of ' &c.). The word ' praṇaya ' occurs in this sense in the Junāgadh Inscription of Rudradāman (E. I. vol. VIII. p. 36 ll. 15–16). Another principle laid down in somewhat poetical and picturesque language is that taxation should be felt by those taxed as light and not heavy or excessive. The Udyogaparva[233] (34. 17–18) states ' just as a bee draws honey but at the same time leaves the flowers uninjured, so the king should take wealth from men without harming them. One (a bee) may search each flower (for honey) but should not cut the very root just like a garland-maker, but not like a coal-maker '. Manu (VII. 129 and 140) laconically puts the matter thus ' just as the leech, the calf and the bee take their sustenance little by little, so must the king draw from his kingdom annual taxes little by little. Let the king not cut up his own root (by levying no taxes) nor the root of others by[234] excessive greed '. Śānti (88

232. कोशमकोशः प्रत्युत्पन्नार्थकृच्छ्रः संगृह्णीयात् । जनपदं महान्तमल्पप्रमाणं वा देवमातृकं प्रभूतधान्यं धान्यस्यांशं तृतीयं चतुर्थं वा याचेत । ... इति कर्षकेषु प्रणयः । ... इति व्यवहारिषु प्रणयः । ... सकृदेव न द्विः प्रयोज्यः । अर्थशास्त्र V. 2.

233. यथा मधु समादत्ते रक्षन् पुष्पाणि षट्पदः । तद्वदर्थान्मनुष्येभ्य आदद्यादविहिंसया ॥ पुष्पं पुष्पं विचिन्वीत मूलच्छेदं न कारयेत् । मालाकार इवारामे न यथाङ्गारकारकः ॥ उद्योग 34. 17–18. पराशर I. 62 is the same as the last of the two. Compare धम्मपद 49 ' यथापि भमरो पुप्फं वण्णगन्धं अहेठयं । पलेति रसमादाय एवं गामे मुनी चरे ॥ '

234. यथा राजा च कर्ता च स्यातां कर्मणि भागिनौ । संवेक्ष्य तु तथा राज्ञा प्रणेयाः सततं कराः ॥ नोच्छिन्द्यादात्मनो मूलं परेषां चापि तृष्णया । ईहाद्वाराणि संरुध्य राजा संप्रीतिदर्शनः ॥ शान्ति 87. 17–18 ; मनु. VII. 139 has the half नोच्छिन्द्यात् &c.

4-6) states that the king should draw (taxes) from the realm lightly in the way the bee draws honey from the trees, he should do so in the way of the calf and should not bruise the udders (as the calf does not). Those verses also refer to the action of the leech, of the tigress carrying her cubs between her jaws and the rat gnawing at the feet of sleeping men. These ideas pervaded society so much that the same figure of the bee is instanced as regards the Buddhist bhikkhu's importunity for alms in the Dhammapada (verse 49). The king should act like a gardener who prepares garlands without harming the trees and their leaves and should not act like one who prepares coals from trees (Śānti 71. 20)[235]. Manu VII. 139 requires that the king should not through greed tax the subjects heavily, as he would thereby cut off the roots (i. e. prosperity and contentment) of the people, nor should he cut off his own roots (i. e. reduce himself to bankruptcy) by levying no taxes. A third principle of taxation was that when increasing taxes the rise should be gradual and a little at a time (Śānti 88. 7-8). Taxes were to be recovered at a proper time and proper place (Śānti 88. 12 and Kām. V. 83-84)[236]. When taxing traders the king should make allowance for the price they had to pay, for the chances of selling the commodity (in his kingdom), the distance over which the merchandise was brought, what they must have spent for their food and condiments and the cost of guard-

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235. मालाकारोपमो राजन्भव माङ्गारिकोपमः । शान्ति 71. 20; vide शुक्रनीतिसार IV. 2. 113 for the same figure.

236. आददीत धनं काले त्रिवर्गपरिवृद्धये ॥ यथा गौः पाल्यते काले दुह्यते च तथा प्रजा ॥ कामन्दक V. 83-84. One may note the Moscow decree that all male and female peasants between 18 and 45 years were to work six days yearly without pay on roadwork. With the above principles of taxation one may compare Adam Smith's famous canons: (1) the subjects of every state ought to contribute towards the support of the Government as nearly as possible in proportion to their respective abilities i. e. in proportion to the revenue which they respectively enjoy under the protection of the State. (2) The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid ought to be clear and plain to the contributor and to every other person. (3) Every tax ought to be levied at the time or in the manner in which it is most likely to be convenient for the contributor to pay it. (4) Every tax ought to be so contrived as both to take out and keep out of the pockets of the people as little as possible over and above what it brings into the public treasury (vide 'Wealth of nations' ed. by Rogers, 1869, vol. II, pp. 414-416.)

ing the merchandise (Manu VII. 127 = Śānti 87. 13–14)[237]. In the case of artisans, before taxing them, the king has to pay regard to the labour and skill involved and to the necessaries of life required by them (Śānti 87. 15). Every one, however poor, must contribute something to the finances of the realm. Manu (VII. 137–138) says that even a very poor man who maintains himself by following some occupation should be asked to contribute every year something in the nature of *kara* (a tax), while workers (like cooks), artisans (like blacksmiths), śūdras who subsist by manual labour (like porters) should be asked to contribute one day's work to the king in a month. Vide Gaut. X. 31–34, Viṣṇu Dh. Ś. III. 32 for the same. But Śukra IV. 2. 121 says that workers and artisans should do one day's work for the king gratis in a fortnight. Gaut. X. 34 adds that the king must supply them with food on the day they work gratis. The importance of a gold and silver reserve was well understood. Kām. (IV. 62–64) says[238] that the king's *kośa* should have many sources for filling it, but few outlets of expenditure, it should be full of all desired kinds of wealth, guarded by trusty officers, rich in pearls, gold and jewels, it should have been acquired according to *śāstric* rules, be capable of bearing great strain of expenditure and that *kośa* is to be preserved only for the purpose of securing the two goals viz. *dharma* and *artha*, for affording maintenance to the servants engaged by the king and as a safeguard against calamities. Śukra IV. 2·3 remarks that kośa is accumulated for the upkeep of the army and for the benefit of the people and for performing sacrifices. Gaut. X. 28–29, Manu VII. 128, VIII. 306–308, Nār. (prakirṇaka 48) and others say, as has been already stated, that taxation is meant for the protection of the subjects and that it is the king's wages (*vetana*) for the protection he affords. Manu IX. 305 compares the king taking taxes to the sun that produces vapour from the seas (in order to return it in the form of rain, as the Raghuvaṁśa I. 18 very happily puts it). Kām. (V. 78–79) enumerates eight principal sources (called *aṣṭavarga*) of filling the treasury

237. विक्रयं क्रयमध्वानं भक्तं च सपरिच्छदम्। योगक्षेमं च संप्रेक्ष्य वणिजां कारयेत्करान्॥ शान्ति 87. 13, Manu VII. 127 reads भक्तं च सपरिव्ययम्; उत्पत्तिं दानवृत्तिं च शिल्पं संप्रेक्ष्य चासकृत्। शिल्पं प्रति करानेवं शिल्पिनः प्रति कारयेत्। शान्ति 87. 15.

238. बह्वादानोऽल्पनिःस्रावः ख्यातः पूजितदैवतः। ईप्सितद्रव्यसंपूर्णो हृद्य आप्तैरधिष्ठितः॥ मुक्ताकनकरत्नाढ्यः पितृपैतामहोचितः। धर्मार्जितो व्ययसहः कोषः कोषज्ञसंमतः॥ धर्महेतोस्तथार्थाय भृत्यानां भरणाय च। आपदर्थं च संरक्ष्यः कोषः कोषवता सदा॥ काम. IV. 62–64 quoted in राजनीतिरत्नाकर p. 34.

through the action of the heads of the departments viz. agriculture, trade-routes (both on land and water), the capital, water embankments, catching of elephants, working mines and collecting gold &c., levying wealth (from the rich), founding towns and villages in uninhabited spots. The Mānasollāsa (II. 4 verses 539–540 p. 77) advises the king to spend ordinarily three-fourths of the yearly revenues and save one-fourth. Śukra (I. 315–317) prescribes that the king should save 1/6 of his total annual income and should spend 1/2 of the whole on the army and one-twelfth each on charity (to the learned, the poor and helpless &c.), ministers, inferior officials, and his private purse or expenses. Śukra IV. 2. 26 requires the king to have as much stock of grain as would be required for three years' consumption in his country. In IV. 2. 13 he sets before the king the impossible ideal that his treasury should be so full that he can support his army for 20 years if no taxes from agriculture or tolls were raised or no fines were recovered. The Mānasollāsa (II. 4. 394, 397 p. 64) says that the king's treasury should be always full of gold, silver, jewels, ornaments and costly clothes, that pure gold in the form of niṣkas (coins) or bars or ornaments should be held in the treasury. Kauṭ. (IV. 3) as stated above permitted the king in famines to make the rich disgorge their wealth. In V. 2 he remarks that if after making special requests for additional taxation, when the treasury is empty and some danger is impending, to the cultivators, merchants, wine-sellers, prostitutes and those who rear pigs, poultry, cattle &c., the king may request the rich to give as much of their gold as they can and the king may honour them by bestowing on them a post at his court, or the dignity of an umbrella, a turban or some decoration in return for their wealth[239]. He permits the king in calamities to take away the wealth of the corporations (*saṅghas*) of heretics and of temples also, to set up all of a sudden on one night a god or a platform (caitya) for a holy tree or a sacred place for a man of miraculous powers and provide for fairs and merry gatherings there and secure the necessary money[240]. He

239. सारतो वा हिरण्यमाढ्यान्याचेत । यथोपकारं वा स्ववशा वा यदुपहरेयुः स्थानच्छत्रवेष्टनविभूषाश्चैषां हिरण्येन प्रयच्छेत् । अर्थशास्त्र V. 2.

240. Compare note 164 above about the Mauryas who wanting money set up images, according to Patañjali. The Rājataraṅgiṇī (V. 166–177) describes the exactions of king Śaṅkara-varman of Kashmir (883–902) A. D. He plundered 64 temples under the pretext of supervision. He imposed taxes on gṛhakṛtya (i. e. on upanayana, marriages &c.). In the 11th century king Harṣa of Kashmir plundered most of the temples (Rājataraṅgiṇī VII. 1090).

recommends many other tricks and dodges for securing money, which are passed over. Perhaps the only redeeming feature of these devices is that Kauṭilya is careful to point out that they were to be employed only against the seditious and the irreligious and not against others (V. 2 '*evam dūṣyeṣvadhārmikeṣu varteta netareṣu*'). Vide Nītivākyāmṛta (kośa-samuddeśa) p. 205 for similar provisions to replenish a depleted treasury. The Paraśurāmapratāpa (Rājavallabhakāṇḍa, folio 27 b) quotes a verse which recommends resort to alchemy for replenishing the treasury[240a]. Śukra IV. 2. 11 advises the king when in financial difficulties to promise interest to the rich and take their wealth and to return it with interest when the difficulties are got over[241]. Śānti (88. 29-30) asks[242] the king to honour the wealthy men in his kingdom, since they constitute an important element of the realm and are the most eminent among all beings and to request them 'confer along with me favours on the people'.

Several reasons are assigned for people's payment of taxes to the king. Gaut. X. 28 says that they should do so because he protects them. In some places the idea put forward is that taxes are the wages (*vetana*) of the king and that the subjects made a contract with the king Manu to that effect. Vide Śānti 67 and 70. 10, Baud. Dh. S. I. 10. 1, Nār. 18. 48, Kauṭ. I. 13 (quoted on p. 21 above). Kāt.[243] (verses 16-17) states that as the king is the owner of the earth but not of other kinds of wealth, he is entitled to get the sixth part of the produce of land and that since human beings reside on land they are declared to be owners (in ordinary parlance, but they have only a qualified ownership). Several kinds of taxes are mentioned in the dharmaśāstras, arthaśāstras and the inscriptions. The oldest

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240 a. धातुवादप्रयोगैश्च विविधैर्वर्धयेद्धनम् । ताम्रेण साधयेत्स्वर्णं रौप्यं वङ्गेन साधयेत् ॥ परशुरामप्र. (राज० folio 27 b).

241. धनिकेभ्यो भृतिं दत्त्वा स्वापत्सु तद्धनं हरेत् । राजा स्वापत्समुत्तीर्णस्तत्स्वं दद्यात्सवृद्धिकम् ॥ शुक्र IV. 2. 11.

242. धनिनः पूजयेन्नित्यं पानाच्छादनभोजनैः । वक्तव्याश्चानुगृह्णीध्वं प्रजाः सह मयेति वै ॥ अङ्गमेतन्महद्राज्ये धनिनो नाम भारत । ककुदं सर्वभूतानां धनस्थो नात्र संशयः ॥ शान्ति 88. 29-30.

243. कात्यायनः । भूस्वामी तु स्मृतो राजा नान्यद्रव्यस्य सर्वदा । तत्फलस्य हि षड्भागं प्राप्नुयान्नान्यथैव तु ॥ भूतानां तन्निवासित्वात्स्वामित्वं तेन कीर्तितम् । राजनीतिप्र. p. 271. Vide H. Dh. vol. II. pp. 865-869 on the question of the king's ownership of land. राजनीतिप्र. explains 'तन्निवासित्वात् भूनिवासित्वात् । स्वामित्वं राज्ञ इति शेषः'. I interpret differently.

word for a tax paid to the king is 'bali'. Ṛg. VII. 6. 5[244] and X. 173. 6 speak of the common people as 'balihṛt' (bringers of *bali*, tribute or tax for the king). In the Tai. Br. (II. 7. 18. 3) it is said 'the people bring bali to him'. In the Ait. Br. (35. 3) the *vaiśya* is characterized as 'balikṛt' (payer of taxes to another), since brāhmaṇas and kṣatriyas were mostly exempt from taxation. Vide Prof. Hopkins' 'Social condition of the ruling class' J. A. O. S. vol. XIII. p. 89 and Fick p. 119 (as to the evidence of the Jātakas on taxation). Manu VII. 80, Matsya 215. 57, Rāmāyaṇa III. 6. 11, Viṣṇu Dh. S. III. 22 employ the word 'bali' in the sense of the 6th part of the produce of land that the king levied as tax. In the Rummindei Pillar Inscription of Aśoka (Corpus I. I. vol. I. p. 164) it is said that the village of Lummini was made free from the payment of 'bali', but had to pay one-eighth share.[245] Here 'bali' is contrasted with 'bhāga' which is a general term. The word 'kara' appears to mean a tax in general. Vide Āp. Dh. S. II. 10. 26. 10, Manu VII. 128, 129, 133, Vas. 19. 23, Viṣṇu Dh. S. III. 26–27. The word 'bhāga' (share) is also general and means the king's dues on land, trees, drugs, cattle, wealth &c. Vide Manu VII. 130–131, VIII. 305, Viṣṇu Dh. S. III. 25. This meaning of 'bhāga' is ancient. We saw above (p. 112) that *bhāgadugha* is one of the ratnins of the king. The Amarakośa treats *bali*, *kara*, and *bhāga* as synonymous.

The word 'śulka' generally means the tolls or customs duties levied from vendors and purchasers on merchandise carried into or out of the kingdom (Śukranītisāra IV. 2. 108). The Mahābhāṣya on the vārtika āyasthānebhyaṣṭhak' on Pāṇ. IV. 2. 104 gives śaulkika and gaulmika as examples, indicating thereby that śulka or toll was levied as a source of income (āya) at the toll-gate.

The principal and perennial sources of income to the state were three viz. the king's share of the produce of land, tolls and customs duties, fines levied from wrongdoers or defeated litigants (vide Śānti 71. 10 and Śukra IV. 2. 13). From this and from Manu X. 119–120 it appears that the principal tax-payers

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244. स निरुध्या नहुषो यह्वो अग्निर्विशश्चक्रे बलिहृतः सहोभिः ॥ ऋ. VII. 6. 5; अथो त इन्द्रः केवलीर्विशो बलिहृतस्करत् ॥ ऋ. X. 173. 6; हरन्त्यस्मै विशो बलिम्। तै. ब्रा. II. 7. 18. 3.

245. लुमिनिग्राम उबलिक (उद्बलिकः) कटे अटभागिये (अष्टभागिकः) च। Corpus I. I. vol. I. p. 164.

were agriculturists, traders, manual workers and artisans. In Manu VIII. 307 quoted in the Daṇḍaviveka of Vardhamāna (p. 5) it is said that the king who, without affording protection, levies *bali, kara, śulka, pratibhoga* (pratibhāga in the printed smṛti) and *daṇḍa* (fines) goes at once to hell and Vardhamāna explains *kara* as the dues recovered every month from villagers and city-dwellers (every month or twice a year in Bhādrapada or Pauṣa according to Kullūka), śulka as the twelfth share recovered from traders, pratibhoga as the dues in the form of fruits, flowers and vegetables presented every day. A few remarks on these and other taxes must be made here. Manu VII. 130, Gaut. X. 24, Viṣṇu Dh. S. III. 22, Mānasollāsa (II. 3. 163 p. 44) and several others prescribe that the king is entitled to the 6th, 8th or 12th part (only sixth in Viṣṇu, also 10th in Gaut.) of the yield of grain from land. Bṛhaspati and the Viṣṇudharmottara[246] (II. 61. 60–61) quoted in the Rājanītiprakāśa (pp. 262–263) make it clear under what circumstances these different shares are to be taken: viz. the king takes 1/6 of *śūkadhānya* (awned or bearded grain like wheat and barley), 1/8 from śimbīdhānya (grain in pods), 10th part from crops grown on land that was fallow for many years, 1/8th from lands sownin the rainy season and one-sixth from lands that have spring crops. The tax was to be paid once every year or once in six months according to the custom of the country. The varying rates prescribed by Kauṭilya have been indicated in describing the duties of the sītādhyakṣa. Śukra (IV. 2. 121–122) gives a salutary rule that if a cultivator constructs a tank, a well or an artificial water-course or brings under cultivation land previously fallow, the king should not levy a tax thereon till the person making the expenditure has recovered twice the amount spent by him. Kauṭ. (II. 1) provides that the king may show favour (*anugraha*) to the cultivators by supplying them with seed, cattle and money and that they should return the advances by easy instalments and that the king shall bestow favours and remissions (*parihāra*) in such a way that they might tend to swell the treasury and not tend to its

246. विष्णुधर्मोत्तरे । शूकधान्येषु षड्भागं शिम्बीधान्ये तथाष्टमम् । राजा बल्यर्थमादद्याद्देशकालानुरूपतः ॥ शूकशिम्बयतिरिक्ते धान्ये मनुगौतमोक्तो द्वादशो दशमो वा भागः । तथा च बृहस्पतिः । दशाष्टषष्ठं नृपतेर्भागं दद्यात्कृषीबलम् । खिलाद्वर्षावसन्ताच्च कृष्यमाणाद्यथाक्रमम् ॥ ...... स एवाह । देशस्थित्या बलिं दद्युर्भूतं षण्मासवार्षिकम् । एष धर्मः समाख्यातः कीनाशानां पुरातनः ॥ राजनीतिप्र. pp. 262–263 and राजधर्मकाण्ड p. 63 (for last two verses).

depletion.[247] It has already been stated that according to the smṛtis the ordinary share of the king was one-sixth, but that in case of the danger of invasion or similar calamity he was allowed to raise it to one-fourth. Megasthenes (Fragment I, p. 42) says that no person is permitted to own land and that besides the land tribute people pay into the royal treasury a fourth part of the produce. This shows that the tax on land was very heavy in the times of Candragupta probably owing to his wars to drive away the Greeks and the huge armies that he had to employ. Manu VII. 130, Gaut. X. 25, Viṣṇu Dh. S. III. 24, Mānasollāsa (II. 3. 163 p. 44) hold that the king is entitled to the 50th part of the cattle reared by herdsmen and of the interest earned by those who lend money at interest. This last appears to be analogous to modern income-tax. The Śukranītisāra IV. 2. 128 makes the tax to be $\frac{1}{32}$ on the interest earned by money-lending.[248] Viṣṇu adds cloth to these two. Manu VII. 131–132, Gaut. X. 27, Viṣṇu Dh. S. III. 25, Viṣṇudharmottara II. 61. 61–63 and Mānasollāsa lay down that the king is entitled to a sixth part of trees, meat, honey, clarified butter, perfumes (like sandal-wood), medicinal plants (like *guḍūcī*), rasa (salt &c.), flowers, roots (like turmeric), fruits, leaves (like palm leaves), vegetables, grass, hides, articles manufactured from bamboo slips, earthenware, articles prepared from stones. Viṣṇu adds deer hides to these.

Śulka is of two kinds, what is levied on goods carried by land and what is levied on goods carried by water (Mit. on Yāj. II. 263). Gaut. X. 26 and Viṣṇu Dh. S. III. 29 state that the śulka is 1/20th part on merchandise for sale (bought and sold in the country itself) which is interpreted by some (like Haradatta and Nandapaṇḍita) as meaning that 5 per cent of the price of articles sold should be taken by the king as tax, while the Rājanītiprakāśa (p. 264) explains that the king is entitled only to five per cent of the difference between the cost price and the sale price of merchandise. Manu VIII. 398 also is susceptible of these two interpretations, as the commentaries of Medhātithi and Kullūka show. The Viṣṇu Dh. S. (III. 29–30) prescribes that the king takes one-tenth on merchandise produced in his own country and one-twentieth on goods imported from a foreign

247. धान्यपशुहिरण्यैश्चैनाननुगृह्णीयात्तान्यनुसुखेन दद्युः । अनुग्रहपरिहारौ चैभ्यः कोशवृद्धिकरौ दद्यात् । कौटिल्य II. 1. p. 47.

248. वार्धुषिकाच्च कौसीदाद् द्वात्रिंशांशं हरेन्नृपः । शुक्र. IV. 2. 128.

country. Yāj. II. 261 says that the śulka on goods is twentieth part of the prices of the goods. Kauṭ. (II. 21) in his chapter on the superintendent of tolls (śulkādhyakṣa) sets out several rules, of which a few interesting ones are given here. Commodities intended for marriage or taken by a bride from her parents to her husband or meant as presents or for the purpose of sacrifices or the *accouchement* of women or for the worship of gods, or for the ceremonies of *caula*, *upanayana*, *godāna*, or for the observance of a *vrata* or for the consecration of a person for a sacrifice and for other special ceremonies shall be allowed to go free of tolls. Whatever commodities would cause harm to the realm or are useless should be destroyed; whatever is of great benefit and seeds not easily available should be allowed to be imported without charge[249]. He further says (II. 22) that śulka is levied on exports and imports of merchandise and that on imports the tax will be one-fifth of the price of the commodities (as a general rule) and prescribes varying rates (1/6, 1/10, 1/15, 1/20, 1/25) on different kinds of articles. In II. 28 (on the superintendent of shipping) Kauṭilya gives further rules some of which have been already noted. He prescribes rules for ferries also, viz. that brāhmaṇas, ascetics, children, very old people, sick men, messengers, pregnant women are to be provided with free passes by the superintendent enabling them to use the ferries. A man with a load and small animals were to pay one māṣa at a ferry, a cow or a horse two māṣas and so on. The Mānasollāsa (II. 4. vv. 374–376 p. 62) prescribes that the king should well guard all harbours (*velā-pura*) that are near the sea, that when the boats of sailors residing in his own country return to the harbour the king should charge one-tenth (of the price of goods brought) as the duty and that when foreign boats are driven to his harbour by an unfavourable wind, the king should confiscate all their merchandise or may give a little to the owners of those boats. In this connection a very interesting inscription may be referred to. The Moṭupalli pillar Inscription[250] of the Kākatīya king Gaṇapatideva (of

249. राष्ट्रपीडाकरं भाण्डमुच्छिन्द्यादफलं च यत् । महोपकारमुच्छुल्कं कुर्याद्बीजं तु दुर्लभम् ॥ कौटिलीय II. 21, verse at end.

250. पूर्वराजानः पोतपात्रेष्वकस्माद्देशाद्देशान्तरमभ्युपेतेषु दुर्वातेन समापतितेषु भग्नेष्ववतीर्णगतेषु च संभृतानि करितुरगरत्नादीनि वस्तूनि सकलानि बलादपहरन्ति । वयमपि प्राणेभ्योपि गरीयो धनमिति समुद्रयानकृतमहासाहसेभ्यस्तेभ्यः वस्तशुल्कादृते कृपया कीर्त्यै धर्माय च सर्वं वितराम इति । वस्तुशुल्कपरिमाणं, then a Telugu passage about the dues. Vide E. I. vol. XII. p. 195.

1244–45 A. D.) issues (E. I. vol. XII p. 195) a charter of security (abhaya-śāsana) to the sailors who ply between towns in different countries, islands and continents: 'when ships that made voyages from one country to another were driven or were shattered or touched at a place that was not meant as a place of call, owing to unfavourable winds, former kings forcibly took away all commodities therein such as gold, elephants, horses &c.; but we, considering that wealth is dearer than life itself, have with kindness decided to give everything except the fixed *śulka* to those sailors who undertake the great venture of crossing the sea, so that thereby we shall secure fame and righteousness; the śulka fixed is as follows'. About *śulka* to be levied on goods brought by the sea the Baud. Dh. S. (I. 10. 15–16) prescribes that it is 10 per cent of the cargo except one best article (which is totally exempted). In the Kharepatan grant of the Śilāra king Raṭṭarāja dated śake 930 it is provided that one golden *gadiyāṇa* was levied as duty on each vessel that came from another country (dvipāntarāyāta-vahitrāt) and one golden *dharaṇa* had to be paid on each vessel coming from the district of Kanḍalamūlīya excepting Cemulya (modern Cheul) and Candrapura. Vide E. I. vol. III. p. 292 at p. 301. Śukra (IV. 2. 109–111) lays down some very reasonable rules viz. on the same commodity śulka is to be taken in the same country by the king only once and never more than once; the king may take either 1/16, 1/20 or 1/32 from the vendee or vendor; no śulka is to be taken from the vendor when he has to sell his goods at the same price at which he bought them or for less than the cost price; the king should always take from the buyer the proper śulka after seeing what profit he is going to make. Nār. (sambhūya-samutthāna verses 14–15) lays down that whatever is to be used by śrotriyas (brāhmaṇas learned in the Vedas) for domestic purposes is exempt, but not what they may employ in trade; the gifts received by brāhmaṇas, the property of stage-players, whatever is carried on a man's shoulders—on all these no śulka must be levied. The exemption of brāhmaṇas and others from taxation has already been dealt with in H. Dh. vol. II. pp. 143–145. Gaut. X. 9–12, Āp. Dh. S. II. 10. 26. 10–16, Vas. I. 42–46 and 19. 23–24, Manu. VIII. 394 exempt a learned brāhmaṇa, the women of all varṇas, all boys before the signs of puberty appear, all those who stay with a teacher for study, ascetics who are intent on dharma, śūdras that do menial work such as washing the feet of higher varṇas, the blind, the deaf and dumb, the diseased, the cripple, an old man of 70 years or

more. Though these really required more protection than most people, humanity and higher feelings made them exempt from taxes from very ancient times. The claims to exemption were probably exaggerated and not respected in practice. For example, Nārada (VI. 14) states that the king is not to levy tolls or customs duties on articles required by śrotriyas for domestic use but if they engaged in trade they had to pay taxes on merchandise.[251] The Mit. on Yāj. II. 4 states that the six exemptions mentioned in Gaut. (VIII. 12-13) apply only to a very learned brāhmaṇa and not to all brāhmaṇas. Manu. VII. 133 provides that a king even when he has lost everything should not levy a tax on śrotriyas and relying on this the Vaijayantī explains Viṣṇu Dh. S. III. 26 as referring only to learned brāhmaṇas. The Rāmāyaṇa (III. 6. 14)[251a] states, differing from other authorities, that the king shares one-fourth of the merit of *munis* (ascetics) dwelling in his kingdom. There was a corresponding liability on the king; viz. he shared half and half in the demerit due to the sins committed by the subjects that are not properly restrained by him (Yāj. I. 337). Manu and Viṣṇu. Dh. S. III. 28 and Viṣṇudharmottara II. 61. 25 say that he reaps the sixth part of the sin of his subjects.

Kauṭ. in II. 15 mentions numerous kinds of taxes or dues that were levied by the king. It is not possible to explain many of the terms used by him. In the ancient inscriptions, when making grants of a village and the like, it is usual for the kings to specify the exemptions from taxes and dues that went with the grant. Such exemptions were called *parihāra*, which word occurs in Kauṭilya and also in the Hāthigumphā Inscription of Khāravela (in the 2nd century B. C., E. I. vol. xx at p. 9) where we read '*bamhanānam jālim parihāram dadāti*'. In certain early records even, these exemptions are said to be eighteen, e. g. in the Hirahaḍagalli plate of Śivaskandavarman (E. I. vol. I. p. 6) and[252] the Omgudu plate of Vijayaskandavarman

251. सदा श्रोत्रियवर्ज्यानि शुल्कान्याहुः प्रजानता । गृहोपयोगि यच्चैषां न तु वाणिज्यकर्मणि ॥ नारद VI. 14 ; ब्राह्मणेभ्यः करादानं न कुर्यात् । विष्णुधर्मसूत्र III. 26, on which वैजयन्ती says 'परंतु श्रोत्रियेभ्यः । म्रियमाणो ... करमिति मानवात् ।'

251 a. यत्करोति परं धर्मं मुनिर्मूलफलाशनः । तत्र राज्ञश्चतुर्भागः प्रजा धर्मेण रक्षतः ॥ रामायण, अरण्य 6. 14.

252. The passage in the plate of Sivaskandavarman (E. I. vol. I. pp. 8-9) is rendered by Dr. Bühler as 'this garden ...... is to be free from taxes, free from the taking of sweet and sour milk, free from troubles about

(*Continued on the next page*)

(E. I. 15 p. 250). Vide H. Dh. vol. II. pp. 864–865 and notes thereon for grants containing names of numerous taxes that were remitted to the grantees and 'Pandyan kingdom' by Prof. Nilkanta Śāstri p. 217 on the same subject.

Fines as a source of revenue will be discussed in the next section about 'law and justice'. The king had numerous other sources of income. Kauṭ. (II. 12) describes the duties of the superintendent of mines. Every thing dug up from mines belonged to the king (Viṣṇudharmasūtra III. 55). According to Manu VIII. 39 and Medhātithi thereon the king is entitled to a half (or some share 1/6, 1/8 &c.) of the ore dug out of mines, as he is the lord of the earth and gives protection. In modern times under sec. 69 of the Bombay Land Revenue Code, Government have a right to all mines and minerals. The Paraśurāmapratāpa[252a] quotes a verse : 'Brahmā arranged that the king was (to be) the owner of all wealth and specially (wealth) that is inside the earth,' while Kāt. (16–17) says (vide note 243) 'the king is declared to be the lord of the land, but never of other kinds of wealth ; therefore he should secure the sixth part of the fruits of land, but not otherwise at all. Since human beings reside on it (land) their (qualified) ownership thereof has been declared'. For further discussion of the theory of the king's ownership of all land, vide H. of Dh. vol. II. pp. 865–869. The State itself manufactured salt, took its share in salt manufactured by private persons and levied 1/8 as State dues on imported salt. Kauṭilya mentions ten kinds of revenue from mines. The

(*Continued from the last page*)

salt and sugar (aloṇagulacchobham = alavaṇa—guḍa—kṣobham), free from taxes, forced labour, ... free from the taking of the oxen in succession, free from the taking of grass and wood, free from the taking of vegetables and flowers ; with these and other immunities of eighteen kinds it must be exempted &c.' (*evamādikehi aṭṭhārasajātiparihārehi*). Vide Vilavatti grant of Pallava king Siṁhavarman for a long enumeration of taxes collected from villages in South India in E. I. vol. 24 p. 296 and a copperplate grant of the Śilāhāra king Aparājita dated *śake* 915, where in granting a garden to a brāhmaṇa occur the following words 'साम्रवृक्षः सदण्डदशापराधः प्रधाननिधानैकदोषचाद्यः इतरसमस्ताश्रुवालीयक-कुमारीसाहसप्रभृतिदण्डदोषसमन्वितः पूर्वप्रसिद्ध-वापकृतादेयवर्जितः समस्तायस्थानसहितः ...... वृक्षः in 'Important Inscriptions from Baroda' vol. 1 edited by Mr. A. S. Gadre (p. 55 at p. 61). कुमारीसाहस appears to mean the 'fine levied for violating a virgin or her modesty'.

252 a. धनानामीश्वरं राजा ब्रह्मणा परिकल्पितः । भूगतानां विशेषेण भर्तासौ विभुराधिपः ॥ q. in परशुरामप्रताप folio 27a.

Mānasollāsa (II. 3. verses 332 and 361) asks the king to guard mines of gems, gold and silver and declares that the Creator made the king the ruler over all wealth and especially over what is inside the earth. Rudradāman (150 A. D.) boasts that he filled his treasury by means of *bali, śulka* and *bhāga* levied according to the śāstras and that his treasury overflowed with heaps of gold, silver, diamonds, *lapis lazuli* and other gems (E. I. vol. VIII. p. 36 at p. 44). Kauṭ. (IV. 1) says that those who sweep the dust (near mines &c.) should get one-third of the valuable things found and the king should get two-thirds and all jewels. The king had also monopolies in certain matters. He alone could catch elephants. Kauṭ. (II. 31–32) and Mānasollāsa (II. 3, pp. 44–58) deal with this matter, the latter describing several methods of catching elephants. Medhātithi[253] on Manu VIII. 400 says that kings have a monopoly as to elephants because it is well-known that they are most useful to them and he specifies certain monopolies such as those in saffron, silken cloth and wool, horses, pearls and jewels. Megasthenes (Fragment XXXVI. p. 90) states that a private person was not allowed to keep an elephant or a horse and that those animals were held to be the special property of the king.

The king recovered a sort of road cess through officers called *antapāla* (guardians of borders or boundaries) viz. 1¼ paṇa on each cart loaded with merchandise, half a paṇa on each head of cattle, ¼th paṇa on minor quadrupeds, and one *māṣa* on a load carried on a man's shoulders (Kauṭ. II. 21 p. 111). Śukra IV. 2. 129 permits for the repairs to the roads a tax on those who use roads. Revenues were raised in numerous other ways such as by charging for stamping weights and measures, by fees levied from keepers of gambling halls, from players, singers and musicians, from prostitutes, from forests and pastures &c. Bṛhat-Parāśara X. p. 282 allows the king in a financial crisis to use even temple funds and make them good when freed from his difficult position. Similarly it allows the king (in difficulty) to take the wealth of usurers, of low people,

253. यानि भाण्डानि राजोपयोगितया यथा हस्तिनः काश्मीरेषु कुङ्कुमप्रायेषु पट्टोर्णादीनि प्रतीच्येष्वश्वा दाक्षिणात्येषु मणिमुक्तादीनि। मेधा. on मनु VIII. 400. The passage as printed by Mandlik and Gharpure is corrupt. We should rather read यथा हस्तिनः। काश्मीरेषु कुङ्कुमं प्राच्येषु पट्टोर्णादीनि. Saffron is still a monopoly in Kashmir. 'सरकपांसुधावकाः सारत्रिभागं लभेरन्। द्वौ राजा रत्नं च। अर्थशास्त्र IV. 1.

of heretics and prostitutes, as the continuance and prosperity of temples and the others depend upon the king.[254]

The Rājataraṅgiṇī (VII. 1008) notices that a tax was levied on Kashmirians performing śrāddha at Gayā. An inscription of Vikramāditya V found near Gadag dated *śake* 934 (1012-13 A. D.) refers to taxes levied on upanayana, marriages, vedic sacrifices &c. (E. I. vol. 20 p. 64). It appears that the king of Aṇahilavād, Siddharāja (1094-1143 A. D.), levied a tax on pilgrims going to Somanātha at the frontier town Bāhuloda and it is said that the tax yielded 72 lakhs of rupees a year, which Siddharāja remitted for the sake of and at the intervention of his mother; vide Bom. G. vol. I. part 1 p. 172 and Prabandha-cintāmaṇi (p. 84, Tawney). The amount is probably very highly exaggerated in order to glorify Siddharāja, but this shows that the yield of the pilgrim tax must have been substantial. The Mānasollāsa in its great desire to help the king with the accumulation of wealth advises the king even to resort to alchemy.[255]

A question may be asked: what were the means of preventing a king from being over-exacting and tyrannical in his taxes? Kauṭ. (VII. 5. pp. 276-277) cites at great length the causes that lead to the impoverishment of the subjects, to their being greedy and disaffected. Among these he mentions[256] ' not paying what ought to be paid and exacting what ought not to be exacted, not punishing the guilty and severely punishing the guilty, not protecting the people against thieves and robbing them of their wealth '. He then states that when the subjects become impoverished they become greedy and when greedy they become disaffected and voluntarily go over to the side of the king's enemy or destroy their own king. In another

254. नृपस्य यदि जातानि देवद्रव्याणि कोशवत् । आदाय रक्ष्य चात्मानं ततस्तत्र च तत् क्षिपेत् । वित्तं वार्धुषिकाणां तु कदर्यस्यापि यत्नवत् । पाषण्डिगणिकावित्तं हरन्नातो न किल्बिषी । देवब्राह्मणपाषण्डिगणका गणिकादयः । वणिग्वार्धुषिकाः सर्वे स्वस्थे राजनि सुस्थिताः ॥ बृहत्पराशर X. p. 282.

255. धातुवादप्रयोगैश्च विविधैर्वर्धयेद्धनम् । ताम्रेण साधयेत् स्वर्णं रौप्यं वङ्गेन साधयेत् ॥ मानसोल्लास II. 4, verse 327 p. 63. Vide n. 240 above.

256. अपदानैश्च देयानामदेयानां च साधनैः । अदण्डनैश्च दण्ड्यानां दण्ड्यानां चण्डदण्डनैः ॥ ... अरक्षणैश्च चोरेभ्यः स्वानां च परिमोषणैः । ... राज्ञः प्रमादालस्याभ्यां योगक्षेमविधावपि । प्रकृतीनां क्षयो लोभो वैराग्यं चोपजायते ॥ क्षीणाः प्रकृतयो लोभं लुब्धा यान्ति विरागताम् । विरक्ता यान्त्यमित्रं वा भर्तारं घ्नन्ति वा स्वयम् ॥ कौटिल्य VII. 5.

place Kauṭilya (XIII. 1) suggests[257] that a conqueror may employ spies who should encourage the subjects of his enemy suffering from famine, depredations of thieves and wild tribes to tell their king, 'we shall beg the king for favours (remission of taxes or help in the way of seeds &c.) but if he does not agree to bestow favours we shall go to another country'. So the threat of disaffection and migrating to another country were the deterrents against the tyranny of heavy taxation according to Kauṭilya. Śānti 87. 36 says[257a] that if the vaiśyas (*gominah*, who bore the brunt of taxation) were neglected, they may disappear from the country and dwell in forests. Manu (VII. 111–112) warns kings who through folly rashly oppress their kingdoms that they may ere long lose their own lives and those of their relatives and also their kingdoms. Yāj. (I. 340–341) is even more emphatic and says that the king who seeks to increase his treasury with wealth extracted by unjust means from his realm loses his wealth in no time and meets destruction along with his relatives. 'The fire springing from the wrath caused by the harassment of the subjects does not cease without burning the family, the wealth and the life of the king.' Kātyāyana (v. 19) harps on the spiritual consequences: 'the king who unjustly takes from his kingdom taxes, fines, share of crops and tolls, incurs[258] sin.' Śukra[259] (II. 319–321 and 370) emphasizes the keeping of daily, monthly and yearly accounts and the entering of the several items of income on the left side of the account and of those of expenditure on the right. The Nītivākyāmṛta[259a] refers to the appointment of auditors when there is discrepancy in the items of income and expenditure.

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257. दुर्भिक्षस्तेनाटव्युपघातेषु पौरजानपदानुत्साहयन्तः सत्रिणो ब्रूयुः । राजानमनुग्रहं याचामहे निरनुग्रहाः परत्र गच्छामः । इति । कौ. XIII. 1.

257a. उपेक्षिता हि नश्येयुर्गोमिनोऽरण्यवासिनः । तस्मात्तेषु विशेषेण मृदुपूर्वं समाचरेत् ॥ शान्ति 87. 36.

258. अन्यायेन हि यो राष्ट्रात्करं दण्डं च पार्थिवः । सस्यभागं च शुल्कं चाप्याददीत स पापभाक् ॥ कात्यायन q. in राजनीतिप्र. p. 276.

259. वत्सरे वत्सरे वापि मासि मासि दिने दिने । हिरण्यपशुधान्यादि स्वाधीनं स्वायसंज्ञकम् ॥ पराधीनं कृतं यत्तु व्ययसंज्ञं धनं च तत् । ... आयमादौ लिखेत्सम्यग् व्ययं पश्चात्पातनम् । वामे चायं व्ययं दक्षे पत्रभागे च लेखयेत् ॥ शुक्रनीतिसार II. 321, 370.

259a. आयव्ययविप्रतिपत्तौ कुशलकरणकार्यपुरुषेभ्यस्तद्विनिश्चयः । नीतिवाक्यामृत p. 189 (अमात्यसमुद्देश).

CHAPTER VIII

BALA (THE ARMY).

Bala is also called *daṇḍa* in Kauṭ. and elsewhere. According to Sumantu daṇḍa means 'punishment, corporal or monetary' and the army with its four arms is included by Sumantu under kośa (acc. to S. V. p. 46).[260] In the Ṛgveda we have frequent references to armies, weapons, battles &c. The word *senānī* occurs in Ṛg. X. 84. 2 where *Manyu* (martial Fury) is invoked to be the Commander.[261] Ṛg. VI. 75 is full of references to bows, arrows, armour, bow-strings, quiver, charioteer, horses, chariots &c. Kām. (XIII. 34–37) states that the king possessed of a sound financial position increases his depleted army, supports his own subjects and is depended upon even by his enemies. All the following result from the possession of a (powerful) army viz. increase of the wealth of one's friends and enemies and of the (king's) territories, prompt attainment of objects that seemed distant, protection of what is already secured, destruction of the armies of the enemy, the keeping together of one's army. Most authorities agree in saying that troops are of six kinds viz. *maula* (hereditary), *bhṛta* or *bhṛtaka* or *bhṛtya* (hired troops), *śreṇi* (guild troops), *mitra* (troops of an ally or friendly power or feudatories), *amitra* (troops that once belonged to the enemy), *aṭavī* or *āṭavika* (wild tribes as troops). Vide Kauṭ.[262] IX. 2 (first sentence), Kām. XVIII. 4, Agnipurāṇa 242. 1–2, Mānasollāsa (II. 6, verse 556 p. 76). The first three works say that each earlier variety of troops is superior to each later one. *Maula* troops corresponded to the modern standing army, since Kauṭ. (IX. 2) prefers them on the ground that they depend on the king for maintenance and are being constantly drilled. They most probably consisted of persons who and whose ancestors got tax-free lands in lieu of military service. The Sabhāparva 5. 63 appears to refer to four kinds (omitting śreṇi and amitra) and Yuddhakāṇḍa 17. 24 refers to five (omitting śreṇi).

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260. दण्डः चातुरङ्गसैन्यं न भवति । अपराधानुसारेण शारीरोऽर्थदण्डः परिकल्पनीयः । अयमभिसन्धिः-सुमन्तुमते चातुरङ्गसैन्यस्य कोश एवान्तर्भाव इति । स. वि. p. 46.

261. अग्निरिव मन्यो त्विषितः सहस्व सेनानीर्नः सहुरे हूत एधि । ऋ. X. 84. 2.

262. मौलभृतकश्रेणीमित्रामित्राटवीबलानां समुद्दानकालाः । ... पूर्वं पूर्वं चैषां श्रेयः संनाहयितुम् । कौटिलीय IX. 2.

The Āśramavāsikaparva[263] (7. 7–8) names five kinds (except *amitra*) and states that maula and mitra armies are superior to the rest and hired troops and śreṇi troops are each other's equals. This division of armies into various kinds is mentioned in the grant of Dhruvasena I of Valabhi in Gupta-Valabhi year 206 (E. I. vol. XI. p. 106, where the king is said to have acquired the kingdom with the help of maula, bhṛta, mitra and śreṇi armies). Mānasollāsa defines the āṭavika[264] army as consisting of *niṣādas*, *mlecchas* and similar castes dwelling in the vicinity of mountains and *amitra* troops as soldiers who once belonged to an enemy king but being defeated were taken captive and made slaves. According to the Rājanītiratnākara (p. 38) 'aribala' means 'troops that come to a king after leaving the king's enemy'. Kām. XVIII. 7 says that the āṭavika troops are, by nature, irreligious, greedy, *anāryas* and non-observers of truth. They correspond to the *pendharis* and freebooters of later times. The reasons why hereditary and other troops are superior to amitra and āṭavika varieties are explained at great length by Kauṭ. IX. 2 and Kām. XVIII. 5–9. Kauṭ. (IX. 2) states that an *amitra* army led by an ārya is superior to wild tribe troops. Both of them are out for plunder and in case no plunder can be had or when there is a disaster they may prove as dangerous as snakes. By śreṇī-bala he has in mind the organized bands of soldiers to whom he refers elsewhere as 'vārtāśastropajīvinaḥ' (vide p. 89 above). As it is not unlikely that members of trade-guilds either themselves learnt the profession of arms or engaged soldiers for the protection of their merchandise and property, these could be pressed into his service by a king in case of need and were distinguished from the hereditary army and hired troops as 'śreṇī-bala'. Differing from the *ācāryas* that troops composed of brāhmaṇas, kṣatriyas, vaiśyas and śūdras are superior for enlistment in the order of the castes, Kauṭ. holds that an army of kṣatriyas well-trained in the wielding of arms or an army of

263. आवृत्ति बलं राजा मौलं मित्रबलं तथा । अटवीबलं भृतं चैव तथा श्रेणिबलं प्रभो । तत्र मित्रबलं राजन् मौलं चैव विशिष्यते । श्रेणीबलं भृतं चैव तुल्ये एवेति मे मतिः ॥ आश्रमवासिक 7. 7–8.

264. पर्वतोपान्तसंवासिनिषादम्लेच्छजातिकम् । अधमं तत्समाख्यातं बलमाटविकं बुधैः ॥ शात्रवास्तु समाक्रान्ता दासभावमुपस्थिताः । तेषां बलं तु विज्ञेयममित्रजबलं बुधैः ॥ मानसोल्लास II. 6. verses 559–560 p. 79.

vaiśyas and śūdras having greater numerical strength is better than an army composed of brāhmaṇa soldiers, since an enemy may win over the latter army by prostrating himself before them.[265] Vide H. Dh. vol. II. pp. 122–123 for discussion on the question whether brāhmaṇas could become soldiers. In Udyogaparva 96. 7 (cr. ed. chap. 94) it is said that king Dambhodbhava every day asked in the morning whether there was any śūdra, vaiśya, kṣatriya or brāhmaṇa equal or superior to him in armed conflict. That shows that soldiers of castes other than kṣatriyas were not unheard of in the Epic age. Kām. IV. (63, 65, 67) says that the hereditary army (pitṛ-paitāmaha) should consist mostly of kṣatriyas. In the Maliya copperplate of Mahārāja Dharasena II (252 Valabhi saṁvat i. e. 571–72 A. D.) Bhaṭārka, the founder of the Valabhi dynasty, is said to have secured the kingdom with the help of maula, bhṛta, mitra and śreṇi troops (Gupta Inscriptions p. 165). Śukra (II. 137–139) says that the soldiers may be śūdras, kṣatriyas, vaiśyas, mlecchas or of mixed castes, provided they are brave, restrained, well-built, devoted to their master and their dharma, and hate the enemy. Śānti (101. 3–5) describes in what respects soldiers from Gāndhāra, Sindhu and other countries and Yavana and Deccan soldiers excel, remarks that brave and strong men are to be found everywhere (verse 6) and that men from the border (i. e. *bhillas* and *kaivartas* according to Nīlakaṇṭha) are desperate fighters, would never run away from battle and so should be preferred for enlistment in the army (verse 19). The Yaśastilaka III (pp. 461–467) describes the characteristics of Northern Indian (auttarāpatha), Deccan (dākṣiṇātya), Dramila (South Indian), Tirhut (Tairabhukta) and Gurjara soldiers. An army was said to be composed of four parts, viz. elephants, horses, chariots and foot-soldiers (caturaṅga bala). Kām. XVIII. 24 says that *bala* is sixfold, viz. the four sections of infantry, cavalry, chariots and elephants together with *mantra* (line of policy) and kośa (treasury). In Śānti. 103. 38 the army is said to have six aṅgas (the well-known four plus kośa and roads for traffic). According to Kauṭilya (II. 2, VII. 11) and Kām. XIX. 62 the destruction of

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265. ब्राह्मणक्षत्रियवैश्यशूद्रसैन्यानां तेजःप्राधान्यात् पूर्वं पूर्वं श्रेयः संनाहयितुमित्याचार्याः । नेति कौटिल्यः । प्रणिपातेन ब्राह्मबलं परोभिहारयेत् । प्रहरणविद्याविनीतं तु क्षत्रियबलं श्रेयो बहुलसारं वैश्यशूद्रबलमिति । कौटिल्य IX. 2.

the enemy's forces and victory depended on elephants.[266] Śānti-parva (100. 24) says that an army in which the infantry predominates remains firm and that cavalry and chariots are all right when there is no rain. Śānti (59. 41–42) enumerates eight elements of the army viz. the well-known four (elephants etc.), viṣṭi (labourers or porters who gave free labour and were only fed but were paid no wages), boats, spies, and guides (deśika).[267] Vide Śānti 121. 44 also. In the Mahābhārata elephants do not, except in rare cases, play any role in the fighting that went on, while chariots and the other arms of an army are described everywhere. In the Virāṭaparva (65. 6) Vikarṇa was seated on an elephant when he attacked Arjuna; Bhīṣmaparva 20. 7 refers to Duryodhana as riding an elephant and (95. 32–33) Bhagadatta is described as seated on an elephant when he attacked Bhīma. In this respect the Epic carries on the vedic tradition. Megasthenes (Fragment 1 p. 30) notes that in ancient India elephants were trained for war and turned the scale of victory. Vast armies were kept by ancient kings and emperors. When Śatrughna started against the demon Lavaṇa he had an army of 4000 horses, 2000 chariots and 100 elephants with him (Rāmāyaṇa VII. 64. 2–4). In the Daśakumāracarita VIII the cynical jester Vihārabhadra reminds his master that the latter had 10000 elephants, three lakhs of horse and numberless foot-soldiers (B. S. S. p. 133, of ed. of 1919).

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266. हस्तिप्रधानो विजयो राज्ञाम्। कौटिल्य II. 2; हस्तिप्रधानो हि परानीकवधः। कौटिल्य VII. 11; नागेषु हि क्षितिभुजां विजयो निबद्धस्तस्माद्गजाधिकबलो नृपतिः सदा स्यात्। कामन्दक XIX. 62; मुख्यं दन्तिबलं राज्ञां समरे विजयैषिणाम्। तस्माद्गजबले कार्यो महद्यो द्विरदा नृपैः॥ मानसोल्लास II. 8. verse 678 p. 90; यतो नागास्ततो जयः। युधभू. p. 42; बलेषु हस्तिनः प्रधानमङ्गं स्वैरवयवैरष्टायुधा हस्तिनो भवन्ति। नीतिवा० (बलसमुद्देश) p. 207. The four feet, the two tusks, the trunk and the tail are the eight weapons of an elephant. Though the Budhabhūṣana (p. 42) contains a glowing eulogy of elephants, the नीतिवाक्यामृत holds that elephants, if not properly trained, cause loss of wealth (because they eat vast quantities of fodder and grains) and of lives (they trample down their own soldiers through fright) 'अशिक्षिता हस्तिनः केवलमर्थप्राणहराः' 22. 5 p. 208. The यशस्तिलक III. p. 491 notes 'न विनीता गजा येषां तेषां ते नृप केवलम्। क्लेशायापि विनाशाय रणे चात्मवधाय च॥. This has often been illustrated in battles against early Moslem and other invaders e. g. vide Elphinstone's History of India (5th ed. of 1866) p. 309 (the fate of Dahir king of Sindh against Mohammed bin Casim, when the former's elephant was struck with a fireball) and p. 329 (Anangpal against Mahmud of Gazni) and also Cambridge History of India, vol. III. (1928) pp. 5 and 16 for the same.

267. रथा नागा हयाश्चैव पादाताश्चैव पाण्डव। विष्टिर्नावश्चराश्चैव देशिका इति चाष्टमम्॥ अङ्गान्येतानि कौरव्य प्रकाशानि बलस्य तु। शान्ति 59. 41–42.

Megasthenes (in Fragment XXVII p. 68) speaks of the camp of Sandrakottos (Candragupta Maurya) that had 400000 men, notes (in Fragment LVI) that the king of Palibothra had in his pay a standing army of six lakhs of foot-soldiers, 30000 cavalry and 9000 elephants (p. 141, McCrindle), that the king of Horatae (Surāṣṭra) had 150000 foot-soldiers, 5000 cavalry and 1600 elephants (*ibid.* p. 150) and that even the Pāṇḍyan kingdom ruled by women had 150000 foot and 500 elephants (*ibid.* p. 147). Vide Beal's 'Buddhist Records &c.' vol. I. p. 213 for the armies collected by Harṣa in his march against the murderer of his elder brother (viz. 5000 elephants, 2000 horse and 50000 foot-soldiers) and the vast armies that he had after six years of conquest viz. 60000 elephants and 100000 cavalry. In the Āsvamedhikarparva (60. 14–20) it is narrated that when Droṇa assumed the post of commander-in-chief the Kaurava army had been reduced to 9 *akṣauhiṇīs* from eleven, that only five were left when Karṇa became *Senāpati* and the Pāṇḍavas had then only three left and under Śalya's command there were only three akṣauhiṇīs and the Pāṇḍavas could oppose to him only one. In reply to a question from Dhṛtarāṣṭra Yudhiṣṭhira states that in the great war the total number of warriors killed in battle came to the colossal figure of 1660020006 (Strīparva 26. 9).[268] The Udyogaparva gives (155. 24–26) the following table for an akṣauhiṇī : 500 elephants, 500 chariots, 1500 cavalry and 2500 foot-soldiers constituted an army called *senā*, 10 *senās* = *pṛtanā*, 10 *pṛtanās* = *vāhinī*, 10 *vāhinīs* = *dhvajinī*, 10 *dhvajinīs* = *camū* and 10 *camūs* = akṣauhiṇī. The Kauravas had eleven akṣauhiṇīs and the Pāṇḍavas had 7. If we take the table in Ādi 2. 19–22 one akṣauhiṇī contained 21870 elephants, the same number of chariots, 65610 horses and 109350 foot-soldiers.[269] But if the other tables be followed then the numbers may be much larger still. Another table furnished by Udyogaparva 155. 28–29 is : 55 men constituted patti, 3 pattis = senāmukha or gulma, 3 gulmas = gaṇa and there were ayutas (10 thousands) of gaṇas in the army of the Kauravas. The Ādiparva (2. 19–22)

268. दशायुतानामयुतं सहस्राणि च विंशतिः । कोट्यः षष्टिश्च षट् चैव ह्यस्मिन्राजन् मृधे हताः ॥ स्त्रीपर्व 26. 9.

269. एको रथो गजश्चैको नराः पञ्च पदातयः । त्रयश्च तुरगास्तज्ज्ञैः पत्तिरित्यभिधीयते ॥ पत्तिं तु त्रिगुणामेतामाहुः सेनामुखं बुधाः । त्रीणि सेनामुखान्येको गुल्म इत्यभिधीयते ॥ त्रयो गुल्मा गणो नाम वाहिनी तु गणास्त्रयः । स्मृतास्तिस्रस्तु वाहिन्यः पृतनेति विचक्षणैः ॥ चमूस्तु पृतनास्तिस्रस्तिस्रश्चम्वस्त्वनीकिनी । अनीकिनीं दशगुणां प्राहुरक्षौहिणीं बुधाः ॥ आदि 2. 19–22.

differs from both tables in some respects. The Udyogaparva 155. 22 further notes that each horseman was surrounded by ten men as attendants (narā daśa hayaścāsan pādarakṣāḥ samantataḥ). Though throughout the centuries the infantry was theoretically and in practice more numerous than cavalry, not much importance seems to have been attached to them as compared with chariots or horsemen. The lexicon called Vaijayantī says that patti consists of three horses, five foot-soldiers, one chariot and one elephant, that three pattis are equal to senāmukha and that senāmukha, gulma, gaṇa, vāhinī, pṛtanā, camū, anīkinī represent each three times as many as the preceding one and that 10 anīkinīs are equal to an akṣauhiṇī. The Nītiprakāśikā[270] gives a table of groups from *patti* to *akṣauhiṇī* and remarks that each of these groups had in turn numerous supporting men e. g. each elephant was followed by a hundred horsemen and a thousand foot-soldiers and each horseman was supported by a thousand foot-soldiers (VII. 3–10). Manu VII. 192 refers to battles on water also. From references in the Mahābhārata it appears that chariots had only two wheels. Vide Bhīṣma 98. 47, Droṇaparva 154. 3, Śalya 16. 24 (Śaineyo dakṣiṇam cakram Dhṛṣṭadyumnas-tathottaram). Two noted warriors were told off to guard the two wheels of the chariot of the principal commanders and are called 'cakra-rakṣau' (vide Bhīṣma 54. 76, 108. 5, Droṇa 91, 36, Karṇa 11. 31, 34. 44). Chariots of great warriors were drawn by four horses e. g. Ādi. 198. 15, Udyoga 48. 50, Droṇa 145. 81. Udyoga 83. 15–21 describe the chariot of Kṛṣṇa and Udyoga 140. 21 states that chariots had small tinkling bells attached to them and also screens of tiger-skin. The Ṛg. contains very graphic descriptions of chariots. Chariots were generally drawn by two horses in the vedic age (Ṛg. V. 30. 1, V. 36. 5, VI. 23. 1) and had two wheels, but the chariot of the Aśvins is described as having three wheels (Ṛg. I. 118. 2, I. 157. 3, X. 41. 1). Ghaṭotkaca, however, had eight wheels to his chariot (Droṇa 156. 61, 175. 13). The Śukranītisāra (II. 140–148) mentions another method of grouping the army. Five or six foot-soldiers made a *patti* over which there

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270. पत्तिः सेनामुखं गुल्मं गणो वै वाहिनी ततः । पृतना चम्वनीकिन्यौ ततश्चाक्षौहिणी स्मृता ॥ ... पत्त्यंगैस्त्रिगुणैः सर्वैः क्रमादाख्या यथोत्तरम् । अनीकिनीं दशगुणामाहुरक्षौहिणीं बुधाः ॥ नीतिप्रकाशिका VII 3 and 10. : compare त्रिहयं पञ्चपादातं पत्त्येकरथकुञ्जरम् । सैन्यं सा पत्तिरेतस्मात्त्रैगुण्यात्स्युर्यथाक्रमम् । सेनामुखं गुल्मगणौ वाहिनी पृतना चमूः । अनीकिनीत्यनीकिन्यः पुनरक्षौहिणी दश ॥ verses 57–58 of the क्षत्रियाध्याय in the भूमिकाण्ड of वैजयन्ती.

was an officer called *pattipa*, over 30 pattipālas there was the gaulmika, over 100 gaulmikas was the officer called śatānika, who had as his assistants an officer called anuśatika, a senānī and a lekhaka (scribe); the officer over twenty elephants or horses was called *nāyaka* (compare modern "naik"). Each of these officers should have a distinctive badge indicative of their position. Ayodhyā 100. 32 (=Sabhā 5. 48) asks: 'I hope you give at the proper time pay and rations to your soldiers according to their deserts and do not delay payment'. Both Nār. (saṃbhūya-22) and Bṛ. state that among persons who work for hire the best is the soldier. The Mānasollāsa (II. 6. 566–569 p. 80) describes that the chiefs of the hereditary army should always be honoured by the king with presents of jewels, ornaments, costly clothes and sweet words and sumptuous provision for their maintenance should be made by bestowing on them a village, or two or more villages and heaps of gold, while hired soldiers should be paid every day or every month or once in three, four or six months or once in a year according to the needs of the king. Megasthenes (Fragment XXXIV p. 88) describes the organization of the Indian army: 'A third governing body directs military affairs, of which there were six divisions with five members to each. One co-operates with the admiral of the fleet, another with the superintendent of bullock trains, the third division has charge of foot-soldiers, the fourth of horses, the fifth of war chariots and the sixth of elephants.' In medieval times chariots appear to have become obsolete. In the graphic descriptions of armies contained in the Harṣacarita (particularly in the 7th ucchvāsa) war chariots are conspicuous by their absence. The Mahābhārata often speaks of horses from the countries to the north-west of India as the best; vide Sabhā 53. 5 (for Kāmboja and Gāndhāra horses), Udyoga 86. 6 (horses from Bālhi), Droṇa 125. 25 and Sauptika 13. 2 (Kāmboja horses). The Harṣacarita II speaks of the best horses as coming from Vanāyu, Āraṭṭa, Kāmboja, Sindhudeśa and Pārasīka. Śukra lays down certain practical rules about the army (IV. 7. 379–390). He says that the soldiers should be encamped outside the town or village but not far from it, that no money-lending should be allowed between the soldiers and the village people, that the king should open separate shops for goods required by soldiers, that no army should be encamped at one place for more than a year, that soldiers should not enter the village without the king's permission, that receipts should be taken from soldiers

for payments made to them and they should be furnished with a writing about their pay. Some of these rules are very old. The Udyogaparva[271] 37. 30 mentions among persons with whom no contractual transactions should be entered into, the king, the king's servants and soldiers.

The Arthaśāstra contains an elaborate discussion (in IX. 1–7 and X. 1–6) about the organization of the king's army, the proper time and place for starting on an invasion, internal and external troubles and calamities and measures against them, means of dealing with traitors and enemies, religious remedies (worshipping gods and falling at the feet of brāhmaṇas, magical rites based upon the Atharvaveda) against misfortunes like fire and flood, epidemics, famine &c., encampment (skandhāvāra) of armies, treacherous and strategic fighting, proper battle grounds, encouragement to one's own army, free labourers and their work, different arrangements or formations (*vyūhas*) of armies. Considerations of space prevent any treatment of these matters. But a few notable points will be set out here. A king may invade his enemy's country either in Mārgaśīrṣa (when the crops sown in the rains are ready) or in Caitra or when the enemy is suffering from some calamity. Śānti (100. 10–11) says the same thing. Internal trouble arises when any minister, *purohita*, *senāpati* or the crown prince is angry or dissatisfied with the king, who should get rid of such trouble by giving up his own fault or by pointing out the danger arising from an enemy. If the crown prince causes trouble he should be kept in confinement or killed, if there is another son of good character. The trouble caused by a provincial Governor or the officer in charge of boundaries (antapāla), the chief of wild tribes or a conquered king is termed external. The king should meet it by setting up one against the other. The encampment of an army is to be made on a site declared to be the best according to the science of buildings and measured by the *nāyaka* (the chief of the army), carpenter and astrologer, the encampment being circular, square or rectangular and having four gates, six roads and nine divisions. Disputes, drinking, holding merry gatherings (*samāja*) and gambling should be prohibited in the camp and the system of passes should be enforced (X. 1). Vanaparva (15. 14, 19) also refers to the system of passes and the fact that

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271. घृणी राजा पुंश्चली राजभृत्यः पुत्रो भ्राता विधवा बालपुत्रा । सेनाजीवी चोद्धृतभृतिरेव व्यवहारेषु वर्जनीयाः स्युरेते ॥ उद्योग 37. 30 (cr. ed. 37. 28).

dancers and musicians were driven away, when Dvārakā was besieged by Śālva. From Udyoga 151. 58 (cr. ed. 149. 53), 195. 12–19 (cr. ed. 196. 12–19) it appears that markets, prostitutes, conveyances, oxen, machines, arms and physicians accompanied an army and that the camp (senāniveśa or skandhāvāra) of Duryodhana looked like the capital itself and was five *yojanas* in extent. Physicians with surgical instruments, blunt instruments (like tweezers), medicines, curative oils and bandages in their hands and women (nurses) looking after the food and drink of the army should stand behind the soldiers uttering encouraging words[272] (Kauṭ. X. 3). The Bhīṣmaparva 120. 55 also states that doctors well-versed in extracting splinters or arrow-heads (from the body) approached with their surgical instruments to extract the darts from Bhīṣma's body. The duties of the labourers (*viṣṭi*) were to examine the camp, roads, bridges, wells, and river *ghats*, to carry machines, weapons, armour, utensils, fodder, to remove from the battle-field wounded men along with their weapons and armour.[273] Each commander had some distinguishing device as his banner e. g. Bhīṣma had a golden tāla tree as his standard (Bhīṣmaparva VI. 17. 18, tālena mahatā Bhīṣmaḥ pañcatāreṇa ketunā). In X. 6 Kauṭilya speaks of several formations (vyūhas) called daṇḍa, bhoga, maṇḍala, aśanihata and the subdivisions such as gomūtrikā, makara &c. In Kām. XVIII. 48–49, XIX. 40 ff., Manu VII. 187–191, Nītiprakāśikā, chap. 6 and in the Mahābhārata many vyūhas are described. Vanaparva (285. 6–7) refers to Rāvaṇa's arrangement of his army according to the rules of Uśanas and of Rāma's army according to Bārhaspatya rules. The Āśramavāsikaparva 7. 15 refers to the formations called Śakaṭa, Padma and Vajra described in the work of Uśanas. Kauṭilya X. 6 also refers to Auśanasa and Bārhaspatya arrangements of armies. Droṇa 75. 27, 87. 22–24, Karṇaparva 11. 14 and 28 mention certain vyūhas like Makara, Śakaṭa &c. Vide also Mānasollāsa II. 20 verses 1170–1181 pp. 134–135, Agnipurāṇa 242. 7–8 and 42–73 for vyūhas. Though Kauṭilya recommends all sorts of tricks and treachery for securing a victory, the

272. चिकित्सकाः शस्त्रयन्त्रागदस्नेहवस्त्रहस्ताः । स्त्रियश्चान्नपानरक्षिण्यः पुरुषाणामुद्धर्षणीयाः पृष्ठतस्तिष्ठेयुः । कौटिल्य X. 3 ; उपातिष्ठन्नथो वैद्याः शल्योद्धरणकोविदाः । भीष्म 120. 55.

273. शिबिरमार्गसेतुकूपतीर्थशोधनकर्मयन्त्रायुधावरणोपकरणग्रासवहनमायोधनाच्च प्रहरणावरणप्रतिविद्धापनयनमिति विष्टिकर्माणि । कौ. X. 4.

Mahābhārata holds up a high ideal. The Bhīṣmaparva[274] 21. 10 remarks that conquerors do not secure victory so much by their armies and prowess as by truthfulness, freedom from cruelty, the observance of dharma and energetic actions. The Śāntiparva (95. 17–18) states that it is better to die while fighting according to the rules of dharma rather than obtain a victory by wicked actions.

In the Bhīṣmaparva (I. 27–32) certain rules of war agreed upon between the Kauravas and the Pāṇḍavas are set out, such as one should fight only with one similarly equipped (i. e. a foot-soldier with a foot-soldier and so on), one should not kill a soldier who is already in combat with another, or who has turned back from fight or is without armour. Āp. Dh. S. II. 5. 10. 12, Gaut. X. 17–18, Yāj. I. 326, Manu VII. 90–93, Śānti 95. 7–14, 96.3, Śānti 98. 48–49, 297. 4, Droṇaparva 143. 8, Karṇa 90. 111–113, Sauptika 5. 11–12, 6. 21–23, Śaṅkha (quoted by the Mit. on Yāj. I. 326), Baud. Dh. S. I. 10. 10–12, Vṛddha-Hārīta VII. 226, Bṛhat-Parāśara X. p. 281, Śukra IV. 7. 354–362, Yuddha-kāṇḍa 18. 27–28 contain rules of war dictated by noble sentiments of humanity and chivalry. Some of these (that will bear comparison with the conventions of the Geneva and Hague Conferences) are set out here. Gaut. (X. 17–18)[275] states: 'no sin is committed by injuring or slaying men in battle excepting him who has lost his horse, charioteer or weapons, him who joins his hands (in supplication for life), whose hair are dishevelled (in flying), who turns away from the field, who sits down, who climbs an eminence or a tree (in flight), except envoys or messengers, except him who declares himself to be a cow or a brāhmaṇa'. Vṛddha-Hārīta VII. 216 exempts spectators. Manu (VII. 90–93) declares "one should not fight with treacherous

274. न तथा बलवीर्याभ्यां जयन्ति विजिगीषवः। यथा सत्यानृशंस्याभ्यां धर्मेणैवोद्यमेन च॥ भीष्म 21. 10; धर्मेण निधनं श्रेयो न जयः पापकर्मणा। नाधर्मश्चरितो राजन् सद्यः फलति गौरिव। मूलानि च प्रशाखाश्च दहन् समधिगच्छति॥ शान्ति 95. 17–18.

275. न दोषो हिंसायामाहवे। अन्यत्र व्यश्वसारथ्यायुधकृताञ्जलिप्रकीर्णकेशपराङ्मुखोपविष्टस्थलवृक्षाधिरूढदूतगोब्राह्मणवादिभ्यः। गौतम X. 17–18; न पानीयं पिबन्तं न भुञ्जानं नोपानहौ मुञ्चन्तं नावर्माणं सवर्मा न स्त्रियं न करेणुं न वाजिनं न सारथिनं न सूतं न दूतं न ब्राह्मणं न राजानमराजा हन्यात्। शङ्ख q. in मिताक्षरा on या. I. 326; बद्धाञ्जलिपुटं दीनं याचन्तं शरणागतम्। न हन्यादानृशंस्यार्थमपि शत्रुं परन्तप॥ आर्तो वा यदि वा दृप्तः परेषां शरणं गतः। अरिः प्राणान् परित्यज्य रक्षितव्यः कृतात्मना॥...एवं दोषो महानत्र प्रपन्नानामरक्षणे। अस्वर्ग्यं चायशस्यं च बलवीर्यविनाशनम्॥ रामायण VI. 18. 27–28, 31; न वधः पूज्यते लोके सुप्तानामिह धर्मतः। सौप्तिकपर्व 5. 11; वृद्धबालौ न हन्तव्यौ न च स्त्री नैव पृष्ठतः। तृणपूर्णमुखश्चैव तवास्मीति च यो वदेत्॥ शान्ति 98. 48–49.

(or concealed) weapons, or with barbed or poisoned weapons or with weapons the points of which are blazing with fire. Let a fighter not strike one who has climbed on an eminence, nor a eunuch, nor one who joins the palms of his hand (in supplication), nor one with flying hair (in flight), nor one who sits down or says 'I am thine', nor one who is asleep, nor one who has lost armour, nor one who is naked or disarmed, nor one who is merely looking on without taking part in the fight, nor one who is fighting with another foe, nor one whose weapons are broken, nor one who is afflicted with sorrow, nor one seriously wounded, nor one who is in fear, nor one who has turned to flee." Śaṅkha adds that a soldier should not kill another while the latter is drinking water or taking his meals or is taking off his shoes, nor should one kill a woman, a female elephant, nor a charioteer, nor a bard nor a brāhmaṇa nor should one who is not a king (or noble) kill one who is a king. Baud. Dh. S. I. 10. 10 forbids the use of poisoned or barbed arrows (*karṇin*). Śānti 95. 11 also does the same. Śānti (95. 13-14) enjoins that even an enemy soldier, when wounded, should be treated with medicine and allowed to go when his wounds are healed.[276] Śānti adds that a soldier should not kill boys or old men nor from behind nor one who holds a blade of grass in his mouth (as a mark of submission). These rules, though probably ideal and not strictly followed in every case, are far more humane as compared with the practice in modern warfare when non-combatants are killed from the air even at night without warning. In ancient times non-combatants went generally unmolested, to which Megasthenes bears testimony when he says (Frag. I. p. 32) 'Tillers of the soil even when battle is raging in the neighbourhood are undisturbed by any sense of danger, for the combatants allow those engaged in husbandry to remain quite unmolested.' Manu VII. 32 allows a king to harass his enemy's country, but Medhātithi on VII. 32 asks the invader to save his enemy's people if possible (particularly brāhmaṇas). The rule in *gadāyuddha* (fight with maces or clubs) was that no blow was to be struck below the navel (Salyaparva 60. 6). But this rule was violated by Bhīma when he struck Duryodhana on the thigh with his mace. Duryodhana recounts (in Śalya 61) all the bad deeds of Kṛṣṇa and the Pāṇḍavas and the only reply that Kṛṣṇa makes is that he too was guilty of

276. भग्नशस्त्रो विपन्नश्च कृत्तज्यो हतवाहनः। चिकित्स्यः स्यात् स्वविषये प्राप्यो वा स्वगृहे भवेत्॥ निर्व्रणश्च स मोक्तव्य एष धर्मः सनातनः। शान्ति 95. 13-14.

numerous breaches of morality and the chivalrous rules of war (such as the slaying of Abhimanyu by many engaging him at one time). The general rule was that fighting ceased when the sun went down (Bhīṣma 49. 52–53). But in Droṇaparva 154 and 163. 16 ff. we have a description of night battles and it is provided that chariots, elephants and horses should carry lamps.

It has already been shown how it was the duty of a kṣatriya and of every soldier to fight and die in battle rather than run away. A fighting spirit was inculcated by holding out several rewards. One was the acquisition of booty and territory (Gaut. X. 41, Manu VII. 206, Bhagavadgītā II. 37); others were the satisfaction of having done one's duty as a kṣatriya (Gītā II. 31–33), honour and fame (Gītā II. 34–35), heaven and other-worldly rewards (Yāj. I. 324, Manu VII. 88–89), protection of brāhmaṇas (Āp. Dh. S. II. 10. 26. 2–3). Viṣṇu Dh. S. III. 44–46 have already been quoted above (p. 58). The Śānti (98. 40–41) states that a soldier who runs away from the field falls into Hell. Yāj. (I. 324–325) declares that those who, while fighting with weapons that are not treacherous (poisoned &c.) for the sake of the land (of their master or of the enemy) die in battle without turning back from it go to heaven like *yogins*, that each step of those who do not flee even when their comrades have been killed is equal to a solemn sacrifice (like the Aśvamedha); the king (the master) takes away all the merit of those who run away from the battlefield and are then killed. Manu VII. 95 contains the same idea. These remarks were applicable not only to kṣatriya soldiers, but to soldiers of all castes who maintained themselves by following the profession of arms. Vide Rājanītiprakāśa p. 407. Parāśara (III. 31) and Bṛhat-Parāśara X. p. 281 remark that a valiant soldier who does not seek mercy though surrounded by many enemies and falls fighting attains imperishable worlds and that when he reaches heaven divine damsels run after him to choose him as their Lord (III. 34–35). Parāśara III. 36 is a [277] verse which is

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277. यं यज्ञसंघैस्तपसा च विप्राः स्वर्गैषिणोऽत्र यथैव यान्ति। क्षणेन यान्त्येव हि तत्र वीराः प्राणान् सुयुद्धेषु परित्यजन्तः ॥ पराशर III. 36 ; कौटिल्य X. 3 presents some different readings. The second verse in कौटिल्य is नवं शरावं सलिलस्य पूर्णं सुसंस्कृतं दर्भकृतोत्तरीयम्। तत्तस्य मा भून्नरकं च गच्छेद्यो भर्तृपिण्डस्य कृते न युध्येत् ॥, it occurs also in the प्रतिज्ञायौगन्धरायण (IV. 2) attributed to भास, where also it appears to be a quotation being introduced with the words शृण्वन्तु भवन्तः. पराक्रमस्वीकृते सैन्ये यो युद्धान्न निवर्तते। तस्य स्थानानि दिव्यानि भूरयश्चैकचेतसः ॥ शिरोहतस्य ये वक्त्रे विशन्ति रक्तबिन्दवः। सोमपानेन ते तुल्या इति वसिष्ठजोऽब्रवीत् ॥ युध्यन्ते भूभृतो ये च भूरयश्चैकचेतसः। इष्टैस्तैर्बहुभिर्यज्ञैरेव यान्ति त्रिविष्टपम् । बृहत्पराशर X. p. 281. वासिष्ठज means पराशर.

one of the two quoted by Kauṭ. (X. 3) when soldiers are to be urged on to fight. Kauṭilya (in X. 3) advises that the king himself and his *mantrin* and *purohita* should urge on his soldiers by quoting Vedic and classical Sanskrit passages about the rewards waiting for those who fall fighting for their master and the religious punishments for those who run away. Astrologers should infuse spirit into their side by asserting that the heavenly aspects favour their side. The day before the battle the king should observe a fast, offer oblations into fire to the accompaniment of Atharvaveda *mantras* and cause benedictory texts to be repeated that refer to victory. Bards should recite lays describing heaven as the reward for the brave and hell for the timid and extol the caste, guild, family, deeds and character of the soldiers. The assistants of the purohita should declare that they have practised witchcraft against the enemy. The commander-in-chief and the officers under him should address the army as follows :—'a hundred thousand (paṇas) will be the reward for him who kills the enemy king, fifty thousand for him who kills the commander-in-chief or the crown prince, ... a hundred for slaying the officer of the patti (a battalion), twenty for bringing the head (of a common soldier) and twice the pay and the booty seized by each to all soldiers'. Kām. (XIX. 18–21) says that the king should give the rewards (promised as in Kauṭ.) to the soldiers after they succeed in the exploits mentioned. Vide also Mānasollāsa II. 20 verses 1163–1167 (pp. 133–134) for similar promises. Gaut. (X. 20–23) prescribes that whatever wealth is acquired by a soldier by his individual effort should be given to him by the king, but the horse or elephant caught by a soldier goes to the king, that if many soldiers by a joint effort obtain some valuable plunder the king should choose and retain the best for himself and the rest should be divided among the soldiers according to their services in the battle. Vide Manu VII. 96–97 (which allow even a chariot, horse or elephant to be retained as booty by the soldier and everything else including female slaves, except jewels, gold and silver), Kām. XIX.[278] 21–22, Śukra IV. 7. 372.

A treatise will be required to deal with the weapons of war from ancient times. Even in the Ṛgveda several weapons are mentioned e. g. ṛṣṭi (Ṛg. V. 52. 6, V. 57. 2 and 6 on the shoulders

278. रूप्यं हेम च कुप्यं च यो यज्जयति तस्य तत् । दद्यात् वस्त्वनुरूपं हि हृष्टो योधान्नराधिपः ॥ काम. XIX. 21–22 and शुक्र IV. 7. 372 (reads दद्यात्कार्यानुरूपं च सहर्षयन्).

of the Maruts), arrows (V. 57. 2, VI. 75. 17), quivers (V. 57. 2), the aṅkuśa (of Indra in VIII. 17. 10, X. 44. 9), paraśu (X. 28. 8), kṛpāṇa (probably a dagger, in X. 22. 10), vajra made of *ayas* (X. 48.3, X. 113.5). Atharvaveda IV. 6. 6. refers to poisoned arrows. In the Atharvaveda[279] I. 16. 2 and 4 reference is made to lead as destroying sorcerers and it is said 'if you kill our cow or horse or man we shall pierce you with lead so that you will cease to kill our strong men'. In Tai. S. I. 5. 7. 6 it is said[280] that when a *samidh* is offered into fire with the mantra 'indhānās-tvā śataṁ himāḥ' the sacrificer discharges against his enemy the śataghnī (weapon killing a hundred) which acts like vajra itself'. Dr. Oppert in his Introduction to the Nītiprakāśikā pp. 10-13 relies on these and other passages for holding that the ancient Indians knew fire-arms and that Atharvaveda I. 16.4. refers to *leaden balls* discharged from cylinders. Vide Dr. Oppert's work on the 'weapons, army organisation and political maxims of the ancient Hindus' (1880), where he describes several weapons and holds that gunpowder was known in India long before the 13th century A. D. Mr. G. T. Date's 'Art of war in Ancient India' (London 1929), Dr. P. C. Chakravarti's work (1941, Dacca) and Prof. Dikshitar's book on the same subject may be consulted for details. The numerous weapons mentioned in the Mahābhārata (e. g. Udyoga 155. 3-9) also are passed over here. Vide Hopkins' paper in J. A. O. S. Vol. XIII pp. 269-303 for detailed descriptions. The Allahabad Stone Pillar Inscription of Samudragupta (middle of 4th century A. D.) contains a long list of weapons (C I. I. III pp. 6-7).[280a] One important question is whether gunpowder and fire-arms were known to our ancient and medieval works. Śukra refers to gunpowder called *agnicūrṇa* in II. 93,196, IV. 7. 203, guns (IV. 7. 209-211) and gives the formula of gunpowder in IV. 7. 201 (viz. the mixing of five *palas* of saltpetre, one *pala* of sulphur and one *pala* of coal powder). The Śukranītisāra is comparatively a late work and was probably

279. सीसायाध्याह वरुणः सीसायाग्निरुपावति । सीसं म इन्द्रः प्रायच्छत्तदङ्ग यातुचातनम् ॥ यदि नो गां हंसि यद्यश्वं यदि पूरुषम् । तं त्वा सीसेन विध्यामो यथा नोऽसो अवीरहा ॥ अथर्ववेद I. 16. 2 and 4.

280. एषा वै सूर्मी कर्णकावत्येतया ह स्म वै देवा असुराणां शततर्हांस्तृंहन्ति यदेतया समिधमादधाति वज्रमेवैतच्छतघ्नीं यजमानो भ्रातृव्याय प्रहरति। तै. सं I. 5. 7. 6. सायण explains 'ज्वलन्ती लोहमयी स्थूणा सूर्मी। सा च कर्णकावती छिद्रवती। अन्तरपि ज्वलन्तीत्यर्थः। तत्समानेयमृक्। ... अनया समिधानेन शतघ्नीमेनामृचं वज्रं कृत्वा'.

280a. 'परशु-शर-शङ्कु-शक्ति-प्रास-असि-तोमर-भिन्दिपाल-नाराच-वैतस्तिकाद्यनेकप्रहरणविरूढाकुलव्रणशताङ्कशोभासमुदयोपचितकान्ततरवर्ष्मणः' Gupta Inscriptions pp. 6-7.

written in the 13th or 14th century when cannon came to be used in Europe for the first time. Both in the Rāmāyaṇa and the Mahābhārata the word *śataghnī* (killing a hundred people) occurs frequently. In the Yuddhakāṇḍa[281] 3. 13 it is stated that at the gates of Laṅkā hundreds of iron śataghnīs, looking burnished, sharp and terrible, had been arranged by the demons. In a poetic description of Laṅkā in the Sundarakāṇḍa chap. 2, it is said that śataghnīs and śūlas were like the hair on the head of Laṅkā (verse 21). In the Vanaparva 15 there is a fine description of Dvāravatī (Dvārkā) besieged by Śālva, in which it is said that the capital had numerous towers and turrets, machines, tomaras, aṅkuśas, śataghnīs &c. In Ādi. 207. 34, Vanaparva 169. 16, 284. 5, 290. 24, Droṇa 156. 70, Karṇa 11. 8, Śalya 45. 110 the śataghnī is mentioned, but it is impossible to find from these what exactly it was like. From Vanaparva 284. 31 it appears that the śataghnīs were discharged with force by the hands and had wheels and round balls or stones in it. In Droṇa 179. 46 it is said that the śataghnī employed by Ghaṭotkaca had wheels and killed four horses at once. In Droṇa 199. 19 śataghnīs are said to have two or four wheels. In Vanaparva[282] 284. 4 it is said that the powder of *sarjarasa* (resin from Sal tree) had been collected. In the Harivaṁśa (Bhaviṣyaparva 44. 20), among the weapons hurled at Narasiṁha by Hiraṇyakaśipu were blazing śataghnīs (śataghnībhiśca dīptābhir-daṇḍairapi sudāruṇaiḥ). In Rāmāyaṇa VII. 32. 44 we are told that at the tip of the weapon called musala (club) blazed forth fire like a bunch of Aśoka flowers. The Sundarakāṇḍa couples together *śataghnī* and *musala* (4. 18). It looks probable that resinous powder was used in some cylindrical contrivance (or rockets) mounted on wheels and capable of throwing stones. But gunpowder appears not to have been used. There is no description of smoke due to śataghnīs. Hopkins (J. A. O. S. XIII pp 299–303) holds that gunpowder and fire-arms were unknown to the great Epic and in the present state of our knowledge this view seems to be correct.

The Nītiprakāśikā (chapters 2–5) names and describes numerous weapons divided into four classes viz. *mukta* (thrown

281. द्वारेषु संस्कृता भीमाः कालायसमयाः शिताः । शतशो रचिता वीरैः शतघ्न्यो रक्षसां गणैः ॥ युद्धकाण्ड 3. 13 ; वप्रप्राकारजघनां विपुलाम्बुनवाम्बराम् । शतघ्नीशूलकेशान्तामट्टालकवतंसकाम् ॥ मनसेव कृतां लङ्कां निर्मितां विश्वकर्मणा । सुन्दरकाण्ड 2. 21–22.

282 कपाटयन्त्रदुर्धर्षा बभूवुः सहगुल्मकाः । साशीविषघटा योधाः ससर्जरसपांसवः ॥ मुसलालातनाराचतोमरासिपरश्वधैः । अन्विताश्च शतघ्नीभिः समधूच्छिष्टमुद्गराः ॥ वनपर्व 284. 4–5.

or discharged such as arrows), *amukta* (not thrown such as swords), *muktāmukta* (thrown and not thrown, such as *astras* which after discharge can be taken back) and *mantramukta* (astras which cannot be taken back). The Agnipurāṇa (249–252) and the Viṣṇudharmottara (II 178–182) give a summary of the Dhanurveda (both agreeing almost word for word, but the latter containing more verses than the former) and speak of five kinds of weapons viz. yantramukta (discharged from a machine, a sling, bow &c.), pāṇimukta (thrown with the hand such as a stone or *tomara*), muktāmukta (like a prāsa), amukta (sword) and niyuddha or bāhuyuddha (wrestling). The science of astras was of a supernatural kind. In the epics and purāṇas, the great heroes are said to have learnt *astravidyā* either from a teacher or from their father or by practising austerities and sometimes (as in the case of Kuśa and Lava) certain astras pass to the son by the mere fact of his birth and the wish of his father. Whether the Dhanurveda often referred to in the epics had consigned this science of astras to writing and could have enabled a reader to possess the miraculous powers attributed to astras is more than a modern can say. The Agnipurāṇa (chap. 134–135) contains magical incantations for victory in war and conquest of the worlds. The Paraśurāmapratāpa (Rājavallabhakāṇḍa folios 9–12) contains numerous mantras and yantras and incantations derived from Tantra works like the Brahmayāmala.

The Mahābhārata is careful to point out that an army constitutes the most inferior kind of *bala* (power). Udyogaparva (37. 52–55) states that *bala* is of five kinds viz. brute force (*bāhubala*), that due to the acquisition of ministers (amātyalābha), that derived from wealth (dhanalābha), that from noble descent (*abhijātabala*) and the power of wisdom (prajñābala), which last is the best of all. These are quoted by the Budhabhūṣana p. 79. In Śānti. 134. 8 it is said[283] that there is nothing that the strong cannot accomplish and that whatever the strong do is pure. In another place it is said 'everything is wholesome to the powerful' (Āśramavāsi 30. 24). In Ādi 175. 45 a warrior's power is scorned and the power of the spiritual merit of brāhmaṇas is extolled as the real power.

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283. यद्बलानां बलं श्रेष्ठं तत्प्रज्ञाबलमुच्यते । उद्योग 37. 55 ; नास्त्यसाध्यं बलवतां सर्वं बलवतां शुचि । शान्ति 134. 8; सर्वं बलवतां पथ्यं सर्वं बलवतां शुचि । सर्वं बलवतां धर्मः सर्वं बलवतां स्वकम् ॥ आश्रमवासि 30 24: धिग्बलं क्षत्रियबलं ब्रह्मतेजोबलं बलम् । बलाबले विनिश्चित्य तप एव परं बलम् ॥ आदि 175 45–46. These dicta about the strong remind us of the words of Nietzsche in 'Beyond Good and Evil', section 29 'It is the business of the very few to be independent ; it is a privilege of the strong' (tr. by H. Zimmern).

CHAPTER IX

SUHṚT OR MITRA (ALLY OR FRIEND).

Manu inculcates the necessity of making friends in VII. 208 and cites the qualities of a good friend (for a king) 'a king does not prosper by the acquisition of gold and land so much as by securing a firm friend who would be powerful in future, though he may be of depleted resources at the time. That friend, though a weak one, is commended, who is righteous, grateful, whose subjects (or ministers) are contented, who is attached and who pursues (to the end) work undertaken'. According to Manu VII. 206 land, gold and ally are the three fruits of royal endeavour or policy. Yāj I. 352 is similar to Manu VII. 208. In VII. 9 Kauṭilya in opposition to the above holds that the acquisition of land is better than that of gold and friend and the acquisition of gold is superior to that of a friend[284]. The Mahābhārata (Śānti 138.110) states 'no one is the friend or enemy of any one else; friends or enemies are made by wealth (or objects pursued by a person)'.[285] Kām. VIII. 52 says the same. Śukra. (IV. 1. 8–10) opines 'in the case of a brave, energetic, strong and politic king all others, though outwardly friendly, secretly cherish enmity to him and only wait for (the proper) time (to strike). There is no wonder in this. Are they not themselves greedy of conquering territories? A king has no friend and he is the friend of none'. Śānti (80. 3) says[286] that a friend is of four kinds, one who has the same goal, one who comes for protection or security, one who is naturally so and one who is acquired. Karṇaparva 88. 28 gives the four kinds somewhat differently viz. natural (*sahaja*), acquired by conciliatory words,

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284. संहितप्रयाणे मित्रहिरण्यभूमिलाभानामुत्तरोत्तरो लाभः श्रेयान् । मित्रहिरण्ये हि भूमिलाभाद्भवतः । मित्रहिरण्यलाभाद्यो वा लाभः सिद्धः शेषयोरन्यतरं साधयति ॥ कौटिल्य VII. 9.

285. न कश्चित्कस्यचिन्मित्रं न कश्चित्कस्यचित्सुहृत् । अर्थतस्तु निबध्यन्ते मित्राणि रिपवस्तथा ॥ शान्ति 138. 110; कारणेन हि जायन्ते मित्राणि रिपवस्तथा । कामन्दक VIII 52; नास्ति जात्या रिपुर्नाम मित्रं नाम न विद्यते । सामर्थ्ययोगाज्जायन्ते मित्राणि रिपवस्तथा ॥ विष्णुधर्मोत्तर II. 145. 14 = शान्ति 140. 5; न राज्ञो विद्यते मित्रं राजा मित्रं न कस्य वै । शुक्र IV. 1. 9.

286. सहार्थो भजमानश्च सहजः कृत्रिमस्तथा । शान्ति 80. 3. भजमान may mean 'पितृपैतामहक्रमागत' and सहज friends are one's mother's sister's son and the like.

won by wealth and one drawn by one's prowess. Kām. (IV. 74) says that a mitra is of four kinds viz. by birth (such as one's father's father, mother &c.), made by relationship (i. e. marriage), hereditary (one's father's friend), one who is saved from calamities.[287] According to Kām. (IV. 75–76) the qualities of a friendly king are purity (of heart), liberality, bravery, sharing happiness and sorrow, affection, vigilance (to carry out one's friend's object), truth; and briefly the characteristic of a true friend is devotion to the objects desired by his friend. The purpose for which a friend is made is to secure one of the three puruṣārthas, dharma, artha and kāma (Kām. IV. 72).

This subject of making friends leads on to the well-known theory of maṇḍala i. e. of inter-state relationship. Kauṭ. VI. 2 and VII, Manu VII. 154–211, Āśramvāsiparva 6–7, Yāj. I. 345–348, Kām. VIII–XI, Agnipurāṇa 233 and 240, Viṣṇudharmottara II. 145–150, Nītivākyāmṛta pp. 317–343, Rājanītiprakāśa pp. 316–330, Nītimayūkha pp. 44–46 deal with this theory of maṇḍala and the six *guṇas* at great length. As the Kauṭilīya is probably the earliest of these and contains the most elaborate treatment of the subject, a brief outline from it is presented here. The Nītivākyāmṛta (pp. 311–313) copies the very words of Kauṭilya.

The *yogakṣema* (welfare) of a State springs from peace (śama) and exertion (vyāyāma). The latter achieves the completion of works undertaken, while *śama* brings about the undisturbed enjoyment of the fruits of undertakings. The (proper) employment of the six *guṇas* (*sandhi* &c.) is the source of śama and vyāyāma. What results (*udaya*) from these six guṇas is either deterioration, stagnation or progress. *Udaya* depends upon human and divine causes which together govern the world. The human ones are *naya* and *apanaya*. Human causes are seen (anticipated) and can be operated (by men). Naya (good policy) is that out of the human causes from which results *yogakṣema* (welfare); *apanaya* (impolitic way) is that which produces loss (or an unfavourable state). In VI. 1 (last verse) Kauṭilya says that a king who understands *naya* and is endowed with the *ātmaguṇas* and all the elements of the State will conquer the whole world, though originally he may have a small kingdom. The maṇḍala theory is set out in relation to a king who

287. औरसं कृतसम्बन्धं तथा वंशक्रमागतम् । रक्षितं व्यसनेभ्यश्च मित्रं ज्ञेयं चतुर्विधम् ॥ काम. IV. 74.

is called *vijigīṣu* (the ambitious ruler or conqueror). Kām. VIII 6 defines[288] vijigīṣu as a king who aspires to extend his territories, who is possessed of all the seven elements of sovereignty, who has great energy and who makes great efforts. In verses 7–11 he mentions at length his qualities. All our works place before kings this ideal of conquest, domination or self-aggrandizement at the expense of one's weak neighbours. A vijigīṣu is a king who is endowed with good qualities (called ātmasampat on p. 45 above) and with the several elements of the State and who is the fountain of policy (naya), i.e. who has a definite good policy to pursue. An *ari* (actual or potential enemy) is a king or kings who are the immediate neighbours on the circumference of the kingdom of the vijigīṣu. From this it follows that *ari* may comprehend one king, two kings or more who are the immediate neighbours of the vijigīṣu. But it should be remembered as insisted upon by the Nītivākyāmṛta[289] (p. 321 that there is no inflexible rule that the immediate neighbour is an enemy and that the king whose dominion is beyond the immediate neighbour will be a friend. Contiguity or distance is not necessarily the cause of friendship or enmity, but rather it is the purpose (or object) that makes friends or enemies. All that is meant is that the immediate neighbour is most likely to be an *ari* (a real or potential enemy). A mitra (friend of the vijigīṣu) is he who is separated (from the vijigīṣu) by the intervention of the kingdom of the *ari*. A *śatru* is a neighbouring ruler possessed of the characteristics of an enemy[290] (detailed in Kauṭ. VI. 1). The *yātavya* (to be attacked or invaded by the vijigīṣu) is an *ari* who is involved in difficulties. From this it is clear that in the terminology of Kauṭilya *ari* is a generic expression including actual and potential enemies who will generally be on the borders of the kingdom of the vijigīṣu. A *śatru* is an *ari* who invites attack or destruction or harassment or reduction. That enemy who is plunged in vices or calamities may be

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288. संपन्नस्तु प्रकृतिभिर्महोत्साहः कृतश्रमः। जेतुमेषणशीलश्च विजिगीषुरिति स्मृतः॥ काम. VIII. 6.

289. अनन्तरः शत्रुरेकान्तरं मित्रमिति नैष एकान्तः। कार्यं हि मित्रत्वामित्रत्वयोः कारणं न पुनर्विप्रकर्षसंनिकर्षौ। नीतिवा. (षाड्गुण्यस.) p. 321.

290. अराजबीजी लुब्धः क्षुद्रपरिषत्को विरक्तप्रकृतिरन्यायवृत्तिरयुक्तो व्यसनी निरुत्साहो दैवप्रमाणो यत्किंचनकारी अगतिरननुबन्धः क्लीबो नित्यापकारी चेत्यमित्रसंपत्। एवंभूतो हि शत्रुः सुखः समुच्छेत्तुं भवति। कौटिल्य VI. 1.

attacked and is then called *yātavya*[291]; one who has no support or has only a weak support is to be extirpated; an enemy who is the opposite of this last (i.e. who has a support or strong support) is to be either harassed or to be reduced. Support (āśraya) means a strong fort or a good friend (Kām. VIII. 60). So that a *śatru* is of four sorts (yātavya, ucchedya, pīḍanīya, karśanīya). Harassment is caused to him who is without *mantra* and a strong army, while one who is strong in mantra and army is to be rendered weak in these respects. Both a *śatru* or a *mitra* are of three kinds, *sahaja*, *kṛtrima* and *prākṛta*. A sahaja (natural) friend is one who is related through one's parents (such as maternal or paternal aunt's son); one who is resorted to for wealth or safety is kṛtrima (acquired) i. e. one who has obliged the vijigīṣu or has been under his obligations; and the king who is next to the neighbour (i. e. who is separated from the vijigīṣu by the intervention of the neighbour king) is prākṛta (i. e. because he is a prakṛti, an element in the maṇḍala theory). A *sahaja* enemy is one who is born of the same family (such as a step-brother), a *kṛtrima* is one who is antagonistic or incites antagonists (i. e. one who has caused harm to or who has been harmed by the vijigīṣu), while the immediate neighbour is a *prākṛta* enemy. The Mit. on Yāj. I. 345 very concisely but lucidly explains all these and the four kinds of śatru. The Viṣṇudharmottara (II. 145. 15-16) and the Agnipurāṇa (233. 21-22) say that in their opinion the prākṛta is really kṛtrima. Kām. VIII. 56 also speaks of only two, *sahaja* and *kṛtrima*. Although it is possible that the vijigīṣu's realm is surrounded by many kings, the one who is taken for discussion is the enemy and is to be regarded as in front (*purastāt*) of the vijigīṣu. Therefore in front of the vijigīṣu come in order the ari (immediate neighbour), then the mitra (whose domain is next after that of the ari), then the arimitra (the friend of the enemy who will be immediately after the mitra of the vijigīṣu and so will be the enemy of the mitra), then comes the *mitra-mitra* (friend of the friend of the vijigīṣu) and then arimitra-mitra (ally of the enemy's friend). When the *ari* is said

291. अरिसम्पद्युक्तः सामन्तः शत्रुः । व्यसनी यातव्य अनपाश्रयो दुर्बलाश्रयो वोच्छेदनीयः । विपर्यये पीडनीयः कर्शनीयो वा । कौटिलीय VI. 2; अरिः पुनश्चतुर्विधः । 'यातव्योच्छेत्तव्यपीडनीयकर्शनीयभेदेन । तत्र यातव्योऽनन्तरभूमिपतिः व्यसनी हीनबलो विरक्तप्रकृतिः । विदुर्गो मित्रहीनो दुर्बलश्चोच्छेत्तव्यः । पीडनीयो मन्त्रबलहीनः । प्रबलमन्त्रबलयुक्तः कर्शनीयः । निर्मूलनात्समुच्छेदं पीडनं बलनिग्रहम् । कर्शनं तु पुनः प्राहुः कोशदण्डापकर्शनात् ॥ इति । मिताक्षरा on या. 1. 345. These very words are quoted in the सरस्वतीविलास p. 36.

to be in front of the vijigīṣu, the ruler of the territory in the opposite direction is said to be in the rear of the vijigīṣu (*paścāt*) and is called *pārṣṇigrāha*[292] (lit. one who may seize or attack the heels). He is really an enemy but this special term is applied to him and he causes trouble in the realm of the vijigīṣu when the latter has started on an invasion or is about to start on one. The king who is the ruler of the country beyond the pārṣṇigrāha is called *ākranda* (lit. one for whose help a cry is or may be raised by the vijigīṣu). He would ordinarily be a friend being separated from the vijigīṣu by the realm of the pārṣṇigrāha. The friend of the pārṣṇigrāha (who would be immediately next after the ākranda) is called pārṣṇigrāhāsāra and the friend of the ākranda who would be beyond the pārṣṇigrāhāsāra is called ākrandāsāra. A *madhyama*[293] king is one whose realm is close to (is on the border of) that of the vijigīṣu and that of the *ari* (the immediate enemy in front) and who is capable of helping (or favouring) both of them whether both are combined in alliance or not and who is capable of resisting either of them individually when the two are not in combination. An *udāsīna* king is generally defined as one whose territory is beyond or outside of the sphere of the realms of the vijigīṣu, his enemy in front and the madhyama, who is very strong on account of his elements of sovereignty, is capable of helping the above three kings whether they be in combination or not and who is capable of resisting any of the three when they are not in combination. Kullūka on Manu. VII. 153 differs from this explanation i. e. the udāsīna is a powerful king whose realm may be situated in front or in the rear or even at a distance from that of the vijigīṣu, but he is indifferent for some reason or other to the activities of the vijigīṣu. The Mit. on Yāj. I. 345 observes that the udāsīna also is of three kinds and the prākṛta udāsīna is the overlord of the State that is separated from the central state (vijigīṣu) by two intervening States; the

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292. यो विजिगीषौ प्रस्थितेपि प्रतिष्ठमाने वा पश्चात्कोपं जनयति स पार्ष्णिग्राहः। पार्ष्णिग्राहाद्यः पश्चिमः स आक्रन्दः पार्ष्णिग्राहमित्रमासार आक्रन्दमित्रं च । नीतिवाक्यामृत p. 319.

293. अरिविजिगीष्वोर्भूम्यनन्तरः संहतासंहतयोरनुग्रहसमर्थो निग्रहे चासंहतयोर्मध्यमः । अरिविजिगीषुमध्यानां बहिः प्रकृतिभ्यो बलवत्तरः संहतासंहतानामरिविजिगीषुमध्यमानामनुग्रहे समर्थो निग्रहे चासंहतानामुदासीनः । कौटिल्य VI. 2. p. 261; vide अग्नि 240. 3-5 and विष्णुधर्मोत्तर II, 145. 11-12 for almost the same words in verse. मण्डलाद्बहिरेतेषामुदासीनो बलाधिकः। अनुग्रहे संहतानां व्यस्तानां च वधे प्रभुः ॥ अग्निपुराण 240. 4-5. This is quoted by the सरस्वतीविलास p. 39 without naming the source.

madhyama (or *madhyastha* acc. to Nītivākyāmṛta p. 318) is the immediate neighbour of both the vijigīṣu and his enemy, but wants to remain neutral in the conflict of the two for some reason. It will have been noticed that the vijigīṣu, the enemy, the madhyama and the udāsīna are independent catagories, while four out of the remaining eight others viz. mitra, mitramitra, ākranda, ākrandāsāra can be grouped under vijigīṣu, while the other four viz. arimitra, arimitramitra, pārṣṇigrāha and pārṣṇigrāhāsāra may be grouped under ari. It is therefore that Manu (VII. 155-156) speaks of the four prakṛtis (vijigīṣu, śatru, madhyama and udāsīna) as the *mūla* (basis) of the maṇḍala theory and Kām. VIII. 20 informs us that Maya declared that a maṇḍala was constituted by these four. Kām. VIII. 86 gives it as his own opinion that maṇḍala is constituted by *mitra, udāsīna* and *ripu* (enemy) only[294]. Kauṭilya says that the maṇḍala is constituted as explained above by twelve *prakṛtis*. Uśanas was of the same opinion (Kām. VIII. 22) and Kām. (VIII. 41) states that there were numerous views about the number of the elements of the maṇḍala, but a maṇḍala of twelve kings is quite clear and well-known among all people[295]. Kām. (VIII. 20-41) explains how by various combinations of the elements of the maṇḍala with some elements of sovereignty (viz. ministers, rāṣṭra, durga, kośa, bala) different writers held that the maṇḍala comprised 18, 26, 54, 72, 108 and other numbers of prakṛtis. The Sarasvatīvilāsa (pp. 37-41) shows how from different standpoints Uśanas himself argued that the maṇḍala was constituted by one prakṛti, two, three, 10, 21, 108 and that other writers speak also of 4, 5, 6, 14, 18, 30, 36, 44, 60, 72 prakṛtis. All these figures are due to the inveterate habit of scholastic minds to run an idea to the earth and to indulge in divisions and sub-divisions. Even Manu (VII. 157) states that combining each of the twelve members of maṇḍala with the five elements of sovereignty from amātya onwards we get 60 which with the twelve[296] come to 72. It is to this that the

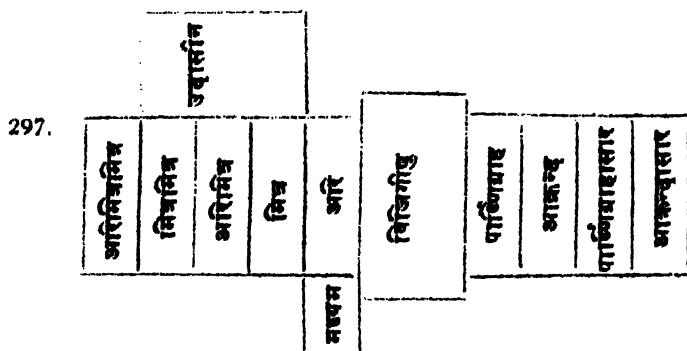
294. Vide the मिताक्षरा on या I. 345 'पार्ष्णिग्राहाक्रन्दासारादयस्त्वरिमित्रोदासीनेष्वेवान्तर्भवन्ति संज्ञाभेदमात्रं ग्रन्थान्तरे दर्शितमिति योगीश्वरेण न पृथगुक्ताः ।'

295. इतिप्रकारं बहुधा मण्डलं परिचक्षते । सर्वलोकप्रतीतं तु स्फुटं द्वादशराजकम् ॥ काम. VIII. 41. This is quoted as a verse of Uśanas in the सरस्वतीविलास p.41.

296. एवं चतुर्मण्डलसंक्षेपः । द्वादश राजप्रकृतयः षष्टिर्द्रव्यप्रकृतयः संक्षेपेण द्विसप्ततिः । तासां यथास्वं सम्पदः शक्तिः सिद्धिश्च । बलं शक्तिः सुखं सिद्धिः । शक्तिस्त्रिविधा । कौटिल्य VI. 2. p. 261; मण्डलस्था च या चिन्ता राजन् द्वादशराजिका । द्विसप्ततिमतिश्चैव प्रोक्ता या च स्वयम्भुवा ॥ शान्ति 59. 70-71. नीलकण्ठ connects this half with medicine, while some read द्विसप्ततिविधा चैव शरीरस्य प्रतिक्रिया.

Daśakumāracarita (VIII. p. 144) refers when speaking of the tree of *naya* that it has 72 prakṛtis as its leaves (dvisaptatiprakṛtipatraḥ ... nayavanaspatiḥ). The central idea of the maṇḍala was to keep a balance of power among a circle of States, some being friendly among themselves owing to their position and surroundings, while others would form an antagonistic group. Kauṭ. (VI. 2) also refers to this number 72, out of which twelve are constituted by kings (*rājaprakṛtis*) and 60 (five sovereignty elements of each of the twelve) are styled (*dravyaprakṛtis*). The Śāntiparva (59. 70-71) also refers to a maṇḍala of 12 kings and to the number 72. Vide N. N. Law's 'Studies in Ancient Hindu Polity' pp. 195-208 for elucidation of the theory of maṇḍala. The theory of maṇḍala has this element of truth in it that on a calculation of probabilities the kings who are the immediate neighbours of a ruler are likely to be his enemies (at least potential) and the kings that are beyond the immediate neighbours may make common cause with the central State taken for discourse in order to crush between them a hostile intermediate State. It suggests that diplomacy may take the lines indicated by position and probabilities. The diagram below will[297] illustrate the idea. Manu (VII. 177 and 180) declares that (state) policy consists briefly in this that a king must so arrange all things or means that the ally, the udāsīna and the śatru cannot harm him or become superior to him. Medhātithi (on Manu VII. 177) remarks that even an ally may become an enemy if his interest so requires (*svārthagativaśācca mitramapyarirbhavati*).

Kauṭilya[298] relates the theory of maṇḍala to the theory of *śaktis* (already referred to on p. 171) and the six-fold policy (ṣāḍguṇya).

297.

298. विजिगीषुः शक्त्यपेक्षः षाड्गुण्यमुपयुञ्जीत । कौ. VII. 3; षाड्गुण्यस्य प्रकृतिमण्डलं योनिः । सन्धिविग्रहासनयानसंश्रयद्वैधीभावाः षाड्गुण्यमित्याचार्याः । कौ. VII. 1; मण्डलानि समावेक्ष्य विजिगीषोर्यथाविधि । यान्याश्रित्य नृपैः कार्यं सन्धिविग्रहचिन्तनम् ॥ विष्णुधर्मोत्तर II. 145. 6.

Everything secures success (i.e. his and his kingdom's happiness) according as the king is able to put forth each of the śaktis to their utmost. The aspiring king taking into account his three śaktis may employ the six guṇas (methods of policy). The circle of the twelve States gives rise to the employment of the six methods. Differing from Vātavyādhi (who said that there were only two methods, sandhi and vigraha) and for once agreeing with the ācāryas, Kauṭilya accepts the position that there are six guṇas and briefly defines them. The Sarasvatīvilāsa (p. 42) quotes a sūtra of Gautama about the six guṇas, which is not found in the printed text.[299] Kauṭilya defines the six as follows: *Sandhi*[300] means making an arrangement or agreement; *vigraha* means taking up a hostile attitude; *āsana* means an attitude of indifference; *yāna* means preparing (for attacking one's enemy); *saṁśraya* means taking shelter (with another powerful king); *dvaidhībhāva* means making peace with one king and adopting a hostile attitude to another. He then states that a king who is less strong than his neighbour may make an agreement with him, one who is rising in power may take up a hostile attitude, whoever thinks 'the hostile king cannot hurt me nor can I hurt him' may remain indifferent (or neutral) in his own State, one who is endowed with all advantages may march against the enemy, whoever is devoid of strength should seek the protection (of a powerful ruler), and one should resort to a two-fold attitude when one's object can be accomplished by a friend. Some other works give more exact definitions and also define dvaidhībhāva somewhat differently, viz. dvaidhībhāva is dividing one's army into two parts. Vide Viṣṇudharmottara[301] II. 150. 3–5 and Mit. on Yāj. I. 346. Some say that saṁśraya means seeking the protection of the udāsīna or madhyama king. Kauṭilya (book VII) gives the most elaborate treatment of these six guṇas and so do

299. तथा च गौतमसूत्रम् । चतुरुपायानवलम्ब्य सन्धिविग्रहयानासनद्वैधीभावसमाश्रयाख्यान्गुणान् परिकल्पयेत् । इति । सरस्वतीविलास p. 42.

300. पणबन्धः सन्धिः, अपकारो विग्रहः, उपेक्षणमासनम्, अभ्युच्चयो यानम्, परार्पणं संश्रयः, सन्धिविग्रहोपादानं द्वैधीभावः, इति षड्गुणाः । परस्माद्धीयमानः सन्दधीत । अभ्युच्चीयमानो विगृह्णीयात् । न मां परो नाहं परमुपहन्तुं शक्त इत्यासीत । गुणातिशययुक्तो यायात् । शक्तिहीनः संश्रयेत । सहायसाध्ये कार्ये द्वैधीभावं गच्छेत् । इति गुणावस्थापनम् । कौटिल्य VII. 1. Vide Raghuvaṁśa 8. 21 where Kālidāsa follows this 'पणबन्धमुखान्गुणानजः षडुपायुङ्क्त समीक्ष्य तत्फलम् ।'

301. पणबन्धः स्मृतः सन्धिरपकारस्तु विग्रहः । जिगीषोः शत्रुविषये यानं यात्रा विधीयते ॥ विग्रहेपि स्वके देशे स्थितिरासनमुच्यते । बलार्धेन प्रयाणं तु द्वैधीभावं तदुच्यते ॥ उदासीने मध्यमे वा संश्रयात्संश्रयः स्मृतः । विष्णुधर्मोत्तर II. 150. 3–5 ; द्वैधीभावः स्वबलस्य द्विधाकरणम् । मिता. on या I. 346.

Manu VII. 160 ff, Kām. IX–XVI, Viṣṇudharmottara II. 145–150, Agnipurāṇa 240, Mānasollāsa pp. 94–116, Rājanītiprakāśa pp. 324–413. Only a few remarks are all that considerations of space allow. Manu (VII. 162–168) states that each of the guṇas is of two sorts. Kām. IX. 2–18 and Agni 240 enumerate sixteen kinds of sandhis and Kām. defines them. His treatment is based on Kauṭ. VII. 3. Kauṭ. (VII. 3) says that when a weak king is attacked by a powerful king who is the leader in a circle of States, the former should at once submit and sue for peace on condition of offering his army, treasury, himself and his territory. Then he says that sandhis made on condition of offering the army are of three kinds viz. *ātmāmiṣa* (lit. offering himself as the prey, which involves the condition that the king himself with a fixed number of troops or with the flower of his army would present himself when called), *ātmarakṣaṇa* (saving himself, where the condition is that the commander-in-chief or the crown prince would present himself with an army), *adṛṣṭa-puruṣa* (lit. in which no person is definitely prescribed, where the agreement is that some one on the king's behalf or the king himself should march with the army to some place as required by the invader). These sandhis are called *daṇḍopanata* (lit. in which submission is made with the army). Sandhis made on condition of offering the treasury (*kośopanata*) are *parikraya* (lit. price, where by offering the treasury the other elements of *rājya* are kept free), *upagraha* (where as much money is offered as can be carried on a man's shoulder), *kapāla* (lit. broken half of a pot, where an immense amount of money has to be paid). Sandhis called *deśopanata* (submission with offer of territory) are *ādiṣṭa* (where a part of the realm is ceded and the rest saved from the invader), *ucchinna* (where all the realm except the capital which has been deprived of all its wealth is offered), *apakraya* where by offering the produce of the land the kingdom is freed, *paribhūṣaṇa* where the agreement is to pay more than the produce of the land. Kām. adds some varieties and remarks (IX. 21–22) that *upahāra* (offering a present) is the only *sandhi* (of which all the rest are varieties) in his opinion, that only the *maitra* sandhi (alliance of friendship without the offer of land, money or anything else) does not come under upahāra.[302] Kām. IX. 20 and Mānasollāsa (II. 11.

302. एक एवोपहारस्तु सन्धिरेतन्मतं हि नः। उपहारस्य भेदास्तु सर्वेऽन्ये मैत्रवर्जिताः॥ अभियोक्ता बली यस्मादलब्ध्वा न निवर्तते। उपहारादृते तस्मात् सन्धिरन्यो न विद्यते॥ कामन्दक IX. 21–22.

pp. 94–95) speak of four sandhis, *maitra*, *parasparopakāra* (agreement to help each other), *sambandhaja* (by offer of a princess in marriage) and *upahāra*. An interesting example of a sandhi is furnished by the Lekhapañcāśikā which gives a form of treaty dated Monday, Full Moon of Vaiśākha in *saṁvat* 1288 (1232 A. D.) between Yādava king Siṅghaṇa of Devagiri who is styled *mahārājādhirāja* and Lāvaṇyaprasāda (Lavaṇaprasāda) a Vāghela king who is styled *rāṇaka* and *mahāmaṇḍaleśvara*, whereby the high contracting parties agreed not to invade each other's possessions, to combine and oppose anyone else who invaded one of them. Vide Bom. G. Vol. I part 1 p. 200 based on Bhandarkar's Report on the search for Mss. 1882–83 pp. 38–40. Kām. IX. 23–26 and Agnipurāṇa 240. 10–13 mention twenty kinds of persons with whom *sandhi* should not be made, Kām. (IX. 27–41) states the reasons why it should be so and in IX. 42–52 seven persons are enumerated with whom he recommends *sandhi* and gives reasons. A king should make sandhi even with one equal in strength (not only with one who is more powerful), since victory in battle is doubtful (Kām. IX. 59).[303] Kaut. uses a striking simile when he says that if one king comes in conflict with an equal they both will be destroyed in the same way as two unbaked earthen pots striking against one another. If a more powerful king rejects the proposal of a weaker king for sandhi, the latter should take up the attitude of offering his army or follow the course prescribed in book XII (*ā balīyasam*). In VII. 12 when dealing with agreements between kings, about undertakings to build forts or irrigational works or forests &c. Kauṭ. makes very interesting remarks about land routes being superior to water routes and about the route to the Deccan and the south being more profitable than the one leading to the Himālayas.[304] Kām. X. 15 (= Agni 240. 19) says that *vaira* (hostile attitude) is of five kinds viz. that of step-brothers, that due to land (seizure of or encroachment on lands or houses), due to woman (carrying away one's wife or loving the same woman), due to words (cutting speech) and due to wrongs. Kām. X. 2–5

303. सन्धिमिच्छेत्समेनापि सन्दिग्धो विजयो युधि। न हि संशयितं कुर्यादित्युवाच बृहस्पतिः॥ काम. IX. 59.

304. स्थलपथेपि हैमवतो दक्षिणापथाच्छ्रेयान् हस्त्यश्वगन्धदन्ताजिनरूप्यसुवर्ण-पण्याः सारवत्तरा इत्याचार्याः। नेति कौटिल्यः। कम्बलाजिनाश्वपण्यवर्जाः शङ्खवज्रमणि-मुक्ताः सुवर्णपण्याश्च प्रभूततरा दक्षिणापथे। कौटिल्य VII. 12.

(= Agni. 240. 20-24) enlarges upon the 16 ways in which *vigraha* (hostility) springs, such as seizing the kingdom, wife, districts, vehicles (horses, elephants) and wealth of another, pride, harassment of subjects &c. When a king feels that his own army is well-nourished and pleased, that his subjects are prosperous and contented and that the army and subjects of another are the opposite of this, then he may adopt a hostile attitude and when he feels sure that he will secure one of the three fruits of hostility (viz. land, ally and wealth—Kām. X. 26-28). Kauṭ. VII. 15 deals with the attitude and conduct of a conquered king who has offered to the conqueror his army (*daṇḍopanata-vṛtta*), while VII. 16 speaks of the conduct of the *daṇḍopanāyī* (an aspiring king who wants to make by means of his army another king submit to him). *Yāna* means marching for invasion on the part of a *vijigīṣu* whose army and prowess are of the highest and whose subjects are contented on account of his good qualities (Kām. XI. 1). The Matsya 240. 2 and the Agnipurāṇa (228. 1-2) add that when the enemy in the rear is overwhelmed by an *ākranda*, then the vijigīṣu should start on an invasion or when the enemy is plunged in calamities. But before actually invading the enemy who is *yātavya* (chosen for attack) an ambassador (dūta) should be sent (Kām. XII. 1) to see whether the enemy will submit without fighting. That is, there was to be no war without negotiations and an ultimatum. In the Mahābhārata (Udyoga 83. 5-7) it is said that Kṛṣṇa started as an envoy from the Pāṇḍavas to the Kauravas at the end of *śarad* (autumn) on the Revatī nakṣatra in the month of Kārtika (verse 7, *Kaumude māsi revatyām śaradante himāgame*). In the Purāṇas and the medieval digests elaborate rules are laid down about the religious and propitiatory ceremonies before starting on an invasion. The Viṣṇudharmottara II. 176 and Agnipurāṇa 236. 1-18 require that for seven days before starting on an invasion the king is to engage in the worship of and make offerings to various gods, first to Gaṇapati, then to all the guardians of the quarters, the planets, Aśvins, Viṣṇu and Śiva and the images in the temples of his capital. Then he is to note what good and bad dreams he sees on those days in his sleep and judge accordingly. Vide Matsya 242, Agnipurāṇa 229 for dreams portending good and evil. This prognostication of good fortune from dreams is very ancient. The Chāndogya Up. (V. 2. 8-9) quotes a verse to the effect that when a man is engaged in the performance of solemn sacrifices for securing some object and sees a woman in a dream he should feel that his rite will be

crowned with reward. Similarly the Ait.[305] Ār. III. 2. 4 mentions the signs of approaching death, one of which is to see in a dream a dark person with black teeth. Both these passages are quoted by Śaṅkara in his bhāṣya on Vedāntasūtra II. 1. 14. The Viṣṇudharmottara II. 132–144 (based on Garga), II. 164, Matsya 228–241, Agni 230–232 are concerned with the portents and omens in the heavens, in the sky and on the earth and rites (*śāntis*) meant to avert the evil prognostications from them. The Mānasollāsa II. 13 pp. 97–112 and Rājanītiprakāśa pp. 331–351 also deal with these and other astrological matters, which are passed over here, though some of them are very interesting e. g. Viṣṇudharmottara II. 135. 1 refers to the weeping and dancing of images. On the 6th day from the time the rites begin which is the day previous to the starting of the invasion the king undergoes a ceremonial bath for victory called *jayābhiṣeka*. This is described at great length in the Rājanītiprakāśa pp. 351–395 quoting extensive passages from the Liṅgapurāṇa. The ceremony of *Jayasnāna* resembles the coronation ceremony in many respects. The Matsyapurāṇa 243. 15–16 and the Viṣṇudharmottara II. 163. 18–31 contain the same long list (with very slight variations) of articles, persons and animals the sight of which is auspicious when the king starts on an invasion and Matsya (243. 2–14) contains another long list of inauspicious sights. A few of the auspicious ones are white flowers, jars full of water, cows, horses, elephants, fire in flames, a courtesan, dūrvā grass, gold, silver, copper, all gems, sword, umbrella, banner, corpse not accompanied by crying persons, fruits, the *svastika* sign. Among the inauspicious things and sights are dark grains, cotton, dried cowdung, fuel, jaggery, tonsured or naked man or man with dishevelled hair or wearing reddish robes, a lunatic, a cāṇḍāla, a pregnant woman, broken pot, chaff, ashes, bones. The Mānasollāsa II. 13 verses 811–823 (pp. 102–103), Nītimayūkha pp. 58–59 also give long lists of inauspicious and auspicious sights or events. Matsya 243. 27 and Viṣṇudharmottara II. 163. 32 are both careful to add that all evil signs are counterbalanced by the confident (or joyous) frame of the mind, which is the highest sign of victory.[306] Gaut.

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305. स यदि स्त्रियं पश्येत्समृद्धं कर्मेति विद्यात् । तदेष श्लोकः । यदा कर्मसु काम्येषु स्त्रियं स्वप्नेषु पश्यति । समृद्धिं तत्र जानीयात्तस्मिन्स्वप्ननिदर्शने । छान्दोग्य V. 2. 8–9; न चिरमिव जीविष्यतीति विद्यात्... अथ स्वप्नाः । पुरुषं कृष्णं कृष्णदन्तं पश्यति स एनं हन्ति । ऐत. आर. III 2. 4.

306. मनसस्तुष्टिरेवात्र परमं जयलक्षणम् । एकतः सर्वलिङ्गानि मनसस्तुष्टिरेकतः ॥ मत्स्य 243. 27 = विष्णुधर्मोत्तर II. 163. 32.

(XI. 15-17) prescribes that the king should heed the advice of astrologers and of those who are adepts in averting the effects of portents and perform the rites indicated by them such as grahaśānti, rites on auspicious days and of *svastyayana*, rites of black magic against his enemy &c. Kauṭ. IX. 7 (at the end) says that the removal of divine calamities is brought about by the worship of deities and by honour to brāhmaṇas and by performing rites prescribed in the Atharvaveda. Manu VII. 82 and Yāj. I. 315 state that gifts made to learned brāhmaṇas are an inexhaustible treasure for the king. The Rājadharmakāṇḍa (p. 109) quotes the Brahmapurāṇa requiring the king to perform two Lakṣahomas every year and also a Koṭihoma. The Rājadharmakāṇḍa (p. 113) and Rājanītiprakāśa (p. 144) quote Udyogaparva 33. 93-95 which set out eight indications of a man's approaching fall, viz. hating brāhmaṇas, opposing brāhmaṇas, depriving them of their wealth, desire to kill or harm them, taking pleasure in calumniating them, not liking their praise, not remembering them in religious acts and getting angry when they make requests.

It may be useful and interesting to see how in very ancient times the king was made ready for battle. The Āśv. Gṛ. S. (III. 12) says: when a battle is impending (the purohita) should make the king put on his armour (in the following way). The purohita should stand to the west of the chariot (of the king) muttering the hymn (Ṛg. X. 173) 'I have brought thee &c.'. He should hand over to the king his armour with Ṛg. VI. 75. 1 'when the man with armour advances it is like the appearance of the cloud &c.'. He hands over the bow with the next verse (Ṛg. VI. 75. 2 'dhanvanā gā). The purohita should make the king recite the next verse (Ṛg. VI. 75. 3) and should himself mutter the 4th verse (Ṛg. VI. 75. 4). He should hand over the quiver to the king with the 5th verse (Ṛg. VI. 75. 5). When the chariot turns in the direction intended the purohita should mutter the sixth verse (Ṛg. VI. 75. 6). He should recite over the horses the 7th (Ṛg. VI. 75. 7). He makes the king recite the 8th (Ṛg. VI. 75. 8) when the latter looks at the arrows and makes the king recite Ṛg. VI. 75. 14 ('he envelopes his arm' &c.) when the latter fastens to his arm the leather (that protects his arm against the bow-string). When the king is being taken forward in the chariot by the charioteer the purohita ascends the chariot near the king and makes him recite the hymn called Abhīvarta (Ṛg. X. 174) and the two verses (Ṛg. VIII. 101. 3-4). Then the priest looks at the king with

the Apratiratha hymn (Ṛg. X. 103 'āśuḥ śiśāno'), the Śāsa hymn (Ṛg. X. 152 'śāsa itthā') and the Sauparṇa hymn 'pra dhārayantu madhuno ghṛtasya'.[307] Then the king should traverse in order all directions in his chariot. He should stand in that direction in which the Sun (by day) or Venus (by night) shines and give fight from that direction. The king should pass his hand over the drum with the three verses (Ṛg. VI. 47. 29–31 'fill with breath (or roar) the heaven and the earth'). The king should discharge arrows with Ṛg. VI. 75. 16 and the purohita should mutter Ṛg. VI. 75. 17 ('where the arrows fall together &c.) when soldiers are fighting, or the purohita may direct or teach (the king to recite from the above such verses as are appropriate to his actions).[308] In the Harṣacarita (7th Ucchvāsa first paragraph) Bāṇa favours us with a realistic and graphic description of the preparations made when Harṣa marched out from his palace on his *digvijaya*. The astrologers found out an auspicious day and *lagna* (sign of zodiac

307. This hymn is found in no *saṃhitā*. Sāyaṇa in his comment on Ait. Br. 29. 9 (where the sauparṇa hymn is mentioned) gives an alternative explanation saying that the sauparṇa hymn referred to is the one declared in the gṛhyasūtra viz. 'pra dhārā yantu &c. , i. e. he does not read 'pradhārayantu ' as in the printed Āśv. Gr. ; on Ait. Br 37. 7 (where the Abhīvarta, Śāsa, Apratiratha and Sauparṇa hymns are mentioned) the comment of Sāyaṇa as printed reads ' pradhārayantu '.

308. संग्रामे समुपोढे राजानं संनाहयेत् । आ त्वा हार्षमन्तरेधीति पश्चाद्रथस्यावस्थाय । जीमूतस्येव भवति प्रतीकमिति कवचं प्रयच्छेत् । उत्तरया धनुः । उत्तरां वाचयेत् । स्वयं चतुर्थीं जपेत् । पञ्चम्येषुधिं प्रयच्छेत् । अभिप्रवर्तमाने षष्ठीम् । सप्तम्याश्वान् । अष्टमीमिषूनवेक्षमाणं वाचयति । अहिरिव भोगैः पर्येति बाहुमिति तलं नह्यमानम् । अथैनं सारथ्यमाणमुपारुह्याभिवर्तं वाचयति प्र यो वां मित्रावरुणेति च द्वे । अथैनमन्वीक्षेताप्रतिरथशाससौपर्णैः । प्र धारयन्तु मधुनो घृतस्येति सौपर्णम् । सर्वा दिशोऽनुपरियायात् । आदित्यमौशनसं वावस्थाय प्रयोधयेत् । उपश्वासय पृथिवीमुत द्यामिति तृचेन दुन्दुभिमभिमृशेत् । अवसृष्टा परापतेतीषून्विसर्जयेत् । यत्र बाणाः संपतन्तीति युध्यमानेषु जपेत् । संशिष्याद्वा । आश्व. गृ. III. 12. With आदित्यमौशनसं वा compare शान्तिपर्व 100. 20 'यतो वायुर्यतः सूर्यो यतः शुक्रस्ततो जयः । पूर्वं पूर्वं ज्याय एषां संनिपाते युधिष्ठिर ॥'. This shows that the king desiring victory should not face the Sun or Venus (औशनस) but should have them behind him and that he should not have the wind blowing in his face but blowing behind him. कालिदास in the कुमारसंभव III. 43 'दृष्टिप्रपातं परिहृत्य तस्य कामः पुरः शुक्रमिव प्रयाणे' refers to this, on which मल्लिनाथ quotes a verse 'प्रतिशुक्रं प्रतिबुधं प्रत्यङ्गारकमेव च । अपि शक्रसमो राजा हतसैन्यो निवर्तते ॥.' The युक्तिकल्पतरु (ed. by N. N. Law) p. 176 says 'शस्तस्तु केवलमतऽध्वनि पृष्ठतोऽर्कः' (verse 79). . Oldenberg's translation (in S. B. E. vol. 29 p. 234) 'he should commence the battle in the line of battle invented by Āditya or Uśanas' is wrong, as will be seen from the above quotations. Hopkins in J. A. O. S. XIII. p. 193n simply follows Oldenberg's translation holding Āditya and Auśanasa to be vyūhas.

rising on the eastern horizon) indicative of his conquest of all the four quarters, Harṣa was bathed in water poured from silver and golden jars, performed worship of Śiva, offered oblations into fire that sent up flames turning from left to right, made gifts of jars full of sesame grains and of cows whose hoofs and horns were tipped with gold, sat on a throne on which tiger-skin was spread &c.

When starting on an invasion the king was required to perform a rite called *nīrājanāvidhi* which consisted in waving lights before horses, elephants, banners, armies &c.[309] In II. 30 Kauṭilya[310] prescribes that on the 9th day of Āśvina lights should be waved before horses and at the beginning and close of invasions and in times of diseases. In II. 32 Kauṭilya speaks of the waving of lights before elephants thrice in the cāturmāsya (from about July to October) and at the time when two seasons meet. Kālidāsa in the Raghuvaṁśa 4·25 refers[311] to the performance of this ceremony when Raghu started on his digvijaya and states (in 17·13) that dūrvā grass, barley sprouts and the bark of the palāśa tree were required in the Nīrājanāvidhi. Kām. IV. 63 speaks of waving lights before horses and elephants (nīrājita-hayadvipaḥ). The Bṛhatsaṁhitā, chap. 44 (verses 16–28) deals with the ceremony of waving lamps before horses, elephants and men. This ceremony had to be performed every year in the month of Āśvina from the first to the 9th day of the bright half or on the 8th, 12th, or 15th of the bright half of Kārtika (acc. to the Bṛhatsaṁhitā 44·2) by those who owned horses and also elephants. It is also described in the Śaunakīya II. 8, Agnipurāṇa 268, Viṣṇudharmottara II. 159 (quoted at length in the Rājanīti-prakāśa pp. 434–438), Kālikāpurāṇa 88·15 ff, Nirṇayasindhu II. p. 169, Yuktikalpataru p. 178. The Bṛhatsaṁhitā describes it as follows:—In the north-east of the capital an ornamental arch of some holy tree was to be erected 10 cubits wide and 16 high. Round the necks of horses threads smeared

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309. राज्ञां यात्राविधिं वक्ष्ये जिगीषूणां परावनीम्। नीराजनाविधिं कृत्वा सैनिकांश्चानयेत्ततः। गजानश्वान्नृणानश्वानिति यात्राक्रमो मतः॥ युक्तिकल्पतरु p. 178

310. नीराजनामाश्वयुजे कारयेन्नवमेऽहनि। यात्रादाववसाने वा व्याधौ वा शान्तिके रतः॥ अर्थशास्त्र II. 30 last verse; त्रिशो नीराजनाः कार्याश्चातुर्मास्यर्तुसन्धिषु। अर्थशास्त्र II. 32, last verse but one. उत्पल explains नीराजन as नीरेण जलेन अजनं स्पर्शनम् (on बृहत्संहिता 43. 1). It is possible to derive the word from निर् + राजन (from राज्).

311. तस्मै सम्यग्घुतो वह्निर्वाजिनीराजनाविधौ। प्रदक्षिणार्चिर्व्याजेन हस्तेनेव जयं ददौ॥ रघु 4. 25.

with saffron paste and marking nut, with rice grains and white mustard and *kuṣṭha* plants tied on them were to be suspended. For seven days mantras addressed to the Sun, Varuṇa, Viśve-Devas, Prajāpati, Indra and Viṣṇu were to be recited over the horses, during those days the horses were not to be harshly addressed nor struck with a whip and auspicious words were to be addressed to them, conches were to be blown, drums beaten and singing indulged in before them. On the 8th day, to the south of the arch a shed with its face to the north and covered with kuśa grass and barks was to be erected and in front of it on a *vedi* fire was to be lighted and various materials and plants such as sandal-wood were to be collected and thrown into jars full of water, various foods were to be offered as *bali*, fuel sticks of *khadira* and other holy trees were to be brought. The king seated on a tiger-skin and facing the east should sit near the fire together with an astrologer and horse doctor and should follow at the direction of the purohita the procedure laid down for Grahayajña (sacrifice to planets) and the raising of Indra's banner. A horse and an elephant possessing the most auspicious signs should be bathed and honoured with new white cloth, sandal-wood paste, garlands and incense and should be brought to the foot of the arch near the shed with sweet words to the accompaniment of music and conch-blowing. The movements of the horse and elephant should be watched and prognostications made therefrom about victory &c. A ball of food over which mantras have been recited should be offered to the horse and if the latter smells it or eats it that is a sign of coming victory. Dipping an *udumbara* twig in the jars filled with water and plants the purohita should touch therewith the horse, the elephant, the king and his soldiers to the accompaniment of mantras. Then making an effigy of the enemy the purohita should pierce it with a sharp and pointed stave in the region of the heart with incantations from the Atharvaveda and break it. The purohita should pronounce over the bridle vedic mantras and insert it in the mouth of the horse, which the king should ride and proceed in the north-east together with his army, with drums beaten, conches blown and banners displayed. This is a propitiatory rite (śānti) as said by Varāhamihira (Bṛhatsaṁhitā 44·2) and the Agnipurāṇa 26·8 and 31 and must have been in vogue centuries before Kauṭilya flourished.

The duty of the conqueror, after vanquishing his opponent, to place on the throne of the late king his son or a kinsman and to respect the customs and usages of the territory conquered has

already been set forth above (p. 71). Conquests resulted in either loss of territory or more generally in the offering of tribute of various kinds to the conqueror viz. wealth (gold and silver), horses, elephants, pearls and gems, fine cloth &c. Particularly horses from Kāmboja, Bālhika, Gāndhāra and other countries in the north and west were highly prized. Vide Sabhā 51. 10, 53. 5, Udyoga 86. 6, Droṇa 156. 47, Sauptika 13. 2; and Sabhā 27. 27, 28. 6 for horses as tribute. In Sabhā 30, 28–30 all the above kinds of tribute are said to have been levied from the Mleccha kings by Bhīma[312].

Kauṭilya devotes one book (VIII) to the discussion of *vyasana*. Vyasana[313] means 'what deprives a man of great good' (from the root 'as' to throw with 'vi'). According to Kauṭ. vyasana may be either the absence of qualities (such as noble birth) or the opposite of such qualities, faults (such as hot temper), excessive attachment (to women &c.), harassment (by invasion or calamities like famines). So vyasanas may broadly be divided into two classes viz. calamities and faults due to *kāma* (passion) and *krodha* (hot temper). The view of many *ācāryas* is that of the vyasanas of the king, ministers, the people of the realm, fort, treasury, army and ally, the vyasanas of each preceding one are more serious than those of each succeeding one. From the discussion in VIII. 1 it appears that Kauṭilya in this case agrees with the ācāryas. Differing from Bhārdvāja Kaut. holds that the calamities befalling a king or his vices are more serious in their consequences than those of the ministers, since it is the king who appoints the ministers, the purohita, other servants and superintendents of departments and he can employ others in their places and since the rise or fall of the people depends upon him. Disagreeing with Viśālākṣa Kauṭilya holds that the vyasanas of ministers have more serious consequences than those of the people, as all (national) undertakings proceed from the ministers, as the security of person and property from internal and external enemies, adoption of remedies to resist calamities, recruiting of army, collection of taxes are all in their hands. Differing from the school of

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312. स सर्वान् म्लेच्छनृपतीन् सागरानूपवासिनः । करमाहारयामास रत्नानि विविधानि च ॥ चन्दनागुरुवस्त्राणि मणिमौक्तिककम्बलम् । काञ्चनं रजतं चैव विद्रुमं च महाधनम् ॥ ते कोटिशतसंख्येन कौन्तेयं महता तदा । अभ्यवर्षन्महात्मानं धनवर्षेण पाण्डवम् ॥ सभा 30. 28–30.

313. गुणप्रातिलोम्यमभावः प्रदोषः प्रसङ्गः पीडा वा व्यसनं व्यस्यत्येनं श्रेयस इति व्यसनम् । कौटिल्य VIII. 1. Vide काम. XIII. 19 and नीतिवा. p 177 for a similar derivation. व्यस्यत्यपवर्तयत्येनं पुरुषं श्रेयस इति व्यसनम् । नीतिवा.

Parāśara, Kauṭilya is of opinion that the vyasana of the people has graver consequences than that of the fort (or capital), for forts, treasury and army, all irrigation and agricultural work, stability, bravery and abundance (of things) spring from the people. Against Piśuna, Kauṭilya states that the calamities befalling the fort (or capital) give rise to graver consequences than those of the army for the reason that it is in the fort that the treasury and army are kept safe. Kauṭ. (VIII. 2) holds that internal troubles are more serious than external ones and troubles due to ministers are the most serious of all internal troubles. Kauṭ. prefers an ignorant ruler (who has not studied śāstras) to a king who is bent on swerving from the dictates of śāstras which he knows; he prefers a king suffering from illness to a new king (a conqueror), a weak but a high-born king to a strong but low-born one. In VIII. 3 he enumerates the several faults and vices which have already been stated above (p. 54). After remarking that ignorance and lack of training are the causes of vices or faults, Kauṭ. discourses on the relative seriousness of the several faults or vices and holds that gambling is worse than hunting, that sexual passion is worse than gambling, that drinking is worse than sexual vice and that gambling is the special cause of dissension among *saṅghas* (corporate assemblies) and among families of nobles that have the characteristics of saṅghas. In VIII. 4 he states that among divine visitations like fire, flood, epidemics and famine, floods are more devastating than fire, diseases and epidemics are less destructive than famine, that the loss of outstanding[314] men is more serious than that of common men even in large numbers, since there can hardly be one eminent man among a thousand ordinary or inferior men. He holds that the trouble caused by the Crown Prince is a lesser evil than that caused by a favourite queen. In VIII. 5 Kauṭilya holds a discussion on the troubles arising from the army and allies. He first enumerates thirty-three matters that may cause trouble with the army, such as not giving due respect to it, or showing contempt to it, not dispensing the pay at the proper time, not preventing diseases from attacking it, having soldiers who are very fond of their wives. He then takes pairs of troubles out of these and states which is the lesser evil of the two. Then he deals with causes that lead to the loss or defection of allies.

314. नेति कौटिल्यः—शक्यः क्षुद्रक्षयः प्रतिसन्धातुं बाहुल्यात्। क्षुद्रकारणाच्च मुख्यक्षयः। सहस्रेषु हि मुख्यो भवत्येको न वा सत्त्वप्रज्ञाधिक्याश्रयत्वात् क्षुद्रकाणामिति। कौ. VIII. 4.

In the Rājadharmakāṇḍa, the Rājanītiprakāśa and other works the king is advised to celebrate several rites and festivals, which may be briefly referred to here. They were meant as propitiatory rites to avert national calamities and also to keep the populace in good humour and to afford enjoyment to people. The Rājadharmakāṇḍa (pp. 115–117) and the Rājanītiprakāśa (pp. 416–419) quote about 35 verses from the Brahmapurāṇa to the effect that the king is to celebrate in one or more of the six months from Vaiśākha festivals (devayātrā) in honour of various deities such as Brahmā, the gods, the Ganges, Vināyaka, Nāgas, Skanda, the Ādityas, Indra and Rudra, the Mātṛs (Durgā and others), the Earth, Viśvakarman, Viṣṇu, Kāmadeva, Śiva, the Moon respectively on the *tithis* from the 1st to the 15th. The same two works quote a passage of 18 verses from the Skandapurāṇa about the festival of moonlight and also the rite of raising the banner of Indra and the latter quotes (pp. 425–433) a long passage from the Viṣṇudharmottarapurāṇa also. Vide H. of Dh. vol. II pp. 825–26 for description of the festival of Indra's banner. They describe the worship of Devī on the 8th and 9th days of Āśvina (from the Devīpurāṇa) when animals were sacrificed, the gifts of cows on the Amāvāsyā of Kārtika, the rite called Vasordhārā (stream of wealth). The details of all these are passed over here for want of space.

CHAPTER X

PURPOSE OF THE STUDY OF RĀJADHARMA AND THE ENDS OF THE STATE

In the preceding pages an attempt has been made to present a picture of the theory and practice of Government and statecraft as delineated by ancient and medieval Indian writers on dharmaśāstra and arthaśāstra. One feature that would strike any reader is the religious colouring with which all theories and ideals are suffused. Another is that the ideal set before rulers and their officers is a highly moral one. Several faults have been found in the theory and practice inculcated by the writers. Except for some centuries before and after the Christian era, monarchy has been the only form of government known in India and monarchy alone is generally envisaged by Indian writers. The result has been that the king came in practice to be almost synonymous with government and the State, though a very lofty sense of his duties and responsibilities was impressed on the king. Another defect lies in the almost total absence of discussion on the form and working of oligarchical or republican States. Besides, once the main outlines of the theory of the State were established by the first writers on polity, for about two thousand years succeeding generations of authors were content to follow in the old grooves and hardly ever made any fresh approach to the problems of government or started any rival conceptions or theories. Ancient authors were content to induce the kings and the people to support as far as possible the *status quo*. They thus provided for a more or less static society and did not encourage any dynamic thoughts or movements. There was no strong or assertive middle class nor was there any organized Church. Though the brāhmaṇas were a sacred class, they were not organized as a body and had to depend only on exhortations and texts to exert influence on the monarchs. It may no doubt be pointed out that similar conditions prevailed almost all the world over. Small States, constant wars and invasions were the commonest phenomena in Europe till the 15th or 16th century and no reproach should be levelled at the Indian writers alone. It cannot, however, be gainsaid that even after experiencing the constant plundering expeditions and religious persecutions of Scythian, Hun and Moslem invaders from the

1st to the 11th and the following centuries the able thinkers, warriors and statesmen of India did not enlarge their limited horizon and find means to consolidate and weld together into a united block the numerous small States that were scattered all over India. They could have put forward a common idea and ideal before all the provinces and peoples of India viz. meeting the onslaught of plundering and fanatical invaders, which, if properly handled, would have acted as a unifying force. It was to some extent only in Vijayānagara and Mahārāṣṭra that in medieval times means were adopted to weaken the power of the invader, to present a solid front and establish powerful Hindu kingdoms. The old writers spun the same old webs of theories that had been there for centuries, they did not formulate new theories nor did they take steps to infuse into the common people a sense of solidarity and unity as Indians and did not inculcate deep and abiding sentiments of patriotism similar to those we find in Western countries for the last two or three hundred years. In spite of such drawbacks it will have to be conceded that ancient Indian writers made substantial and independent contributions to the theory and practice of Government and that their handiwork can stand comparison with the ancient and medieval thought of most countries of the world.

It may be asked: What in these days is the use of the study of the theory and practice of Government in ancient India? It may be argued that the world is now hoping, as promised by the great leaders of the United Nations, to enjoy several freedoms, that great expectations are created in the minds of millions of down-trodden peoples, and that all peoples including Indians will be faced in the near future with democracy and great problems of reconstruction and that knowledge of the past cannot throw much light on the pressing needs of the present or the serious questions that will confront all in the latter half of the 20th century. It may be conceded that the situation in which we find ourselves now and in which we shall be placed in the near future is unique and much light cannot be thrown by a study of the past on the solution of the problems that will have to be tackled by us. But that study has certain useful purposes to serve. Millions of people in India as well as in the world are hardly better than hewers of wood and drawers of water in their own countries. They intensely desire to be masters in their own countries and of their own destinies. The iron has entered

deep in their souls that for countries as well as individuals freedom of action spells happiness and dependence on the will of others is misery (as Manu laconically puts in IV. 160), that men who have no independence are hardly human beings (as the Mārkaṇḍeya 125·29 says).[315] The study of the past will give us hope and convey the assurance that we have in the past conducted governments and administrations of vast empires, that we evolved theories and practices which were not inferior to those of some of the most advanced nations of the world, that, allowed opportunities and scope, we may rise equal to what the circumstances may demand of us. On the other hand, such a study will stimulate thought, focus our attention on our mistakes and short-comings, make us be careful to avoid pitfalls and give us indications of the directions in which we must make a new orientation in our ideals and practices.

At the end of this section on Rājadharma, a question may be asked: what were the ends or purposes that the State in ancient India placed before itself or the dharmaśāstra and arthaśāstra writers said the State should place before itself? The end of the State has been differently stated by different philosophers and theorists of the West from ancient times to the present day. To take only a few examples. To Plato and Aristotle[316] the end of the State was good life for the citizens. But it is not very easy to say what is meant by the good life. Bluntschli in 'Theory of the State' (Oxford, 1885) Book V Chap. IV p. 300 formulates the proper and direct end of the State to be 'the development of the national capacities, the perfection of the national life and finally its completion', provided, of course, that the process of moral and political development shall not be opposed to the destiny of humanity. This definition is not easy to grasp. There is no agreement as to what is the destiny of humanity and the concepts of nation and national life are hardly older than a few centuries even in Europe. For 'nation' one may substitute the word 'country'

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315. सर्वं परवशं दुःखं सर्वमात्मवशं सुखम्। एतद्विद्यात्समासेन लक्षणं सुखदुःखयोः ॥ मनु. IV. 160; स्वतन्त्रता मनुष्याणां परतन्त्रा सदाबला । नरोपि परतन्त्रो यस्तस्य कीदृङ्मनुष्यता ॥ मार्कण्डेयपुराण 125. 29.

316. Aristotle in 'Politics' says 'A state exists for the sake of a good life and not for the sake of life only ... Political society exists for the sake of noble actions and not of mere companionship' (Book III. Chap. 9).

or 'kingdom'. Then it may be of some application to India. It is impossible to define the end of the State in a single word or in a few words. This question about the end of the State has been partly answered already when speaking of the ideals of kingship. At the risk of some repetition a reply to the above question may be given in the following words. The authors on Dharmaśāstra had a very low estimate of human nature, they believed that ordinarily men were depraved, that it was difficult to find a man pure by nature and that men were kept in the straight path by the fear of punishment (Manu VII. 22 = Śānti[316a] 15. 34). Yāj. I. 361 requires the king to punish and bring to the proper path castes and guilds when they swerve from their dharma. Kām. (II. 40 and 42–43) says the same thing and adds that in the absence of daṇḍa the world will revert to the state of mātsya-nyāya (the strong devouring the weak). Śukra I. 23 says the same thing. The ancient writers did not rely on the natural moral impulses of man and on his will to do the right thing. The same ideas are expressed by some Western writers on law and politics. 'A herd of wolves is quieter and more at one than so many men, unless they all had one reason in them or have one power over them' says Jeremy Taylor. Salmond (Jurisprudence p. 65) states 'man is by nature a fighting animal and force is the *ultima ratio* not of kings alone but of all mankind'. We must distinguish between immediate or proximate ends and the ultimate end. The ultimate end or goal of most of our philosophy was mokṣa (release or liberation from the ever-recurring cycle of births and deaths and from the miseries and suffering of life). The same was the ultimate goal of rājadharma. But the proximate goal of the State in India was to create such conditions and

316a. सर्वो दण्डजितो लोको दुर्लभो हि शुचिर्नरः। दण्डस्य हि भयाद्भीतो भोगायैव प्रवर्तते॥ शान्ति 15. 34; इदं प्रकृत्या विषयैर्वशीकृतं परस्परं स्त्रीधनलोलुपं जगत्। सनातने वर्त्मनि साधुसेविते प्रतिष्ठते दण्डभयोपपीडितम्॥ काम. II. 42.; राजदण्डभयाल्लोकः स्वस्वधर्मपरो भवेत्। शुक्र I. 23, This conception bears striking resemblance to the words of Machiavelli in 'Discourses' I. 3 quoted by H. Butterfield in 'Statecraft of Machiavelli' (1940) p. 111 'Those who have discussed the problems of civic life demonstrate–and history is full of examples to confirm the fact–that whoever organizes a state and arranges laws for the government of it must presuppose that all men are wicked and that they will not fail to show their natural depravity whenever they have a clear opportunity, though possibly it may be concealed for a while'.

environments as would enable all men to live in peace and happiness, to pursue their avocations, to follow their own customs and usages and their 'svadharma', to enjoy without interference the fruits of their labour and the property acquired by them. The king was the divinely provided instrument to create the conditions of peace, order and happiness. If the king impartially exercises the power of *daṇḍa* over all, whether his own son or enemy, in proportion to their guilt, he secures this world and the next for himself and the people; the king's scrupulous performance of his own duties leads him and his people to heaven. The task of the State (or the king who represented the State) was to repress by the threat and use of force any violation of the rights of personal freedom and property, to enforce the practice of people's own traditional customs and usages and to take serious care of virtues and dharma. These were the sentiments of Kauṭilya himself (III. 1.).[316] At the very threshold of his work he remarks 'therefore the king should not allow people to swerve from or fail in their duties (dharma); for whoever holds fast by his dharma, observes the rules laid down for *āryas* and those of castes and āśramas (the stages of life) will be happy in this world and the next. The members of society consisting of four castes and having four āśramas when guarded by the king with daṇḍa will abide by their respective paths, being devoted adherents of their respective duties and avocations'.

Both Kām. I. 13 and Śukra I. 67 state[317] that a king following the path of righteousness confers upon himself and his subjects the group of three viz. the three *puruṣārthas* of dharma, artha and kāma; if he acts otherwise he certainly ruins (himself and the people). The same doctrine is inculcated by other works, such as Śānti 85. 2, Mārkaṇḍeya 27. 29-30.[318]

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316 b. राज्ञः स्वधर्मः स्वर्गाय प्रजा धर्मेण रक्षितुः । ... दण्डो हि केवलो लोकं परं चेमं च रक्षति ॥ राज्ञा पुत्रे च शत्रौ च यथादोषं समं धृतः ॥ कौटिल्य III. 1; तस्मात्स्वधर्मं भूतानां राजा न व्यभिचारयेत् । स्वधर्मं सन्दधानो हि प्रेत्य चेह च नन्दन्ति ॥ व्यवस्थितार्य-मर्यादः कृतवर्णाश्रमस्थितिः । त्रय्या हि रक्षितो लोकः प्रसीदति न सीदति ॥ कौटिल्य I. 3, last two verses; चतुर्वर्णाश्रमो लोको राज्ञा दण्डेन पालितः । स्वधर्मकर्माभिरतो वर्तते स्वेषु वर्त्मसु ॥ कौटिल्य I. 4, last verse.

317. न्यायप्रवृत्तो नृपतिरात्मानमपि च प्रजाः । त्रिवर्गेणोपसन्धत्ते निहन्ति ध्रुवमन्यथा ॥ काम. 1. 13 and शुक्र I. 67.

318. वर्णधर्मा न सीदन्ति यस्य राज्ये तथाश्रमाः । वत्स तस्य सुखं प्रेत्य परत्रेह च शाश्वतम् ॥ मार्कण्डेयपुराण 27. 29.

Therefore what the king was to do was to see that the dharmas of *varṇa* and *āśrama* were observed by the people and if they swerved from them to bring them back by punishments. Śukra IV. 4. 39 says that each caste was to observe the rules of the caste handed down from generation to generation and that if its members behaved otherwise they were liable to be punished by the king. The principal works emphasize that each individual in the State should fulfil his own duties (svadharma) as belonging to a particular class (varṇa) or a particular stage of life (āśrama) or his own duties due to the position he occupies and those known as sāmānya dharma such as *ahiṁsā*, truthfulness &c. (for which see H. of Dh. vol. II. pp. 10–11) and that the purpose of the State was to enable him to do so and to prevent others from interfering with him. All this laid undue emphasis on the preservation of the *status quo*, on current beliefs and practices as the ideal. The writers do not emphasize that each individual must actively pursue the good of the society as a whole. As the final goal was mokṣa, undue emphasis was laid on other-worldiness, on individual attainment and on detachment and running away from ordinary worldly affairs. The goal of the State was deemed to be to enable men to attain the four *puruṣārthas*, particularly the first three (as the last viz. *mokṣa* depended only upon individual philosophical insight and mystical experience and was attainable only by a microscopic number). Even the Bārhaspatya-sūtra[319] (II. 43) says that the fruit of polity was the attainment of dharma, artha and kāma. Somadeva begins his Nītivākyāmṛta in a characteristic way when he performs obeisance to *rājya* (the State) that yields the three fruits of dharma, artha and kāma.[320] Kām.[321] IV. 77 winds up his discussion of the seven elements of rājya with the declaration that the entire State depends for its highest stability on wealth and the army and that the State when handled by a sagacious minister results in securing the three goals. Kauṭilya[322] (in I. 7) first advises people not to eschew pleasures altogether,

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319. नीतेः फलं धर्मार्थकामावाप्तिः । धर्मेणार्थकामौ परीक्ष्यौ । बार्हस्पत्यसूत्र II. 43-44.

320. अथ धर्मार्थकामफलाय राज्याय नमः । नीतिवाक्यामृत p. 7.

321. इति स्म राज्यं सकलं समीरितं परा प्रतिष्ठास्य धनं ससाधनम् । गृहीतमेतन्निपुणेन मन्त्रिणा त्रिवर्गनिष्पत्तिमुपैति शाश्वतीम् ॥ काम. IV. 77.

322. धर्मार्थाविरोधेन कामं सेवेत । न निःसुखः स्यात् । समं वा त्रिवर्गमन्योन्यानुबन्धम् । एको ह्यत्यासेवितो धर्मार्थकामानामात्मानमितरौ च पीडयति । अर्थ एव प्रधान इति कौटिल्यः, अर्थमूलौ हि धर्मकामाविति । कौटिल्य I. 7.

but to enjoy pleasures in such a way as not to conflict with the requirements of dharma and artha, and adds that a man may enjoy in an equal degree the three goals of life that are dependent on each other, since any one of the three if pursued to excess harms not only the other two but also itself. The Dharmaśāstra authors held that Dharma was the supreme power in the State and was above the king, who was only the instrument to realize the goal of dharma. To these authors the State was not an end in itself but only a means to an end. Kauṭilya, true to his position as a writer on arthaśāstra, finally states his opinion that *artha* is the chief among the three goals, as the other two depend upon wealth for their realization. With this statement of Kauṭilya, one of the most renowned figures of Indian antiquity, this section on rājadharma may be appropriately brought to a close.

VYAVAHĀRA

(LAW AND ADMINISTRATION OF JUSTICE)

CHAPTER XI

That to administer justice impartially and to punish the guilty were among the prime functions of the sovereign has been stated above (p. 57). The king was deemed to be the fountain (i. e. the distributor) of justice. Kauṭilya[323] (I. 19) prescribes that the king was to look into the disputes of citizens and country people in the 2nd part of the day (divided into eight parts). Manu (VIII. 1–3) states that the king desirous of looking into the disputes of people should enter the *sabhā* (the hall of justice) accompanied by brāhmaṇas, ministers and should there decide every day the causes of litigants. Śukra IV. 5·45 is the same as Manu VIII. 1, Vas. 16·2, Śaṅkha-Likhita, Yāj. I. 327 and II. 1, Viṣṇu Dh. S. III. 72, Nār. (I. 2), Śukra IV. 5·5, Mānasollāsa II. 20, verse 1243 state that the administration of justice was the personal concern of the king. The Mit. on Yāj. II. 1 says that protecting the subjects is the highest duty of a king and that that duty cannot be discharged without eradicating and punishing the wicked, which latter requires that the king should administer justice (vyavahāradarśana). Medhātithi on Manu VIII. 1 also says that protection consists in the removal of troubles, secular and spiritual (adṛṣṭa). Manu VIII. 12 and 14 (= Nār. III. 8–9 p. 42) personifies the administration of justice as Dharma incarnate by representing that when justice is administered the dart of adharma or falsehood by which dharma is pierced is taken out from the body of Dharma. Yāj. (I. 359–360) declares that the impartial administration of justice yields the same rewards as solemn vedic sacrifices do. In this way administration of justice was held to be a very sacred duty. Manu VIII. 128 (= Vṛddha-Hārīta VII. 194) declares that a king who punishes those that do not deserve to be punished and who does not punish those that deserve punishment incurs great obloquy and goes to hell. Vas. (19·40–43) prescribes one day's fast for the king and three days' fast for the *purohita* when the king lets off those that deserve punishment and three days' fast for the king and the *kṛcchra* penance for the purohita when the king

323. द्वितीये पौरजानपदानां कार्याणि पश्येत् । कौ. I. 19.

punishes the innocent. The Mahābhārata[324] (Anuśāsana 6·38 and chap. 70) and Rāmāyaṇa say that if a king intent on pleasures does not show himself to litigants who approach him for decision, he would suffer like king Nṛga. The Śukranītisāra (IV. 5·8) also says the same thing. In the Rāmāyaṇa (VII. 53–54) king Nṛga is said to have been cursed to become a chameleon for a long period by two brāhmaṇas who had a dispute about the ownership of a cow and could not see the king for many days. Megasthenes (Frag. XXVII. pp. 70–71) says 'the king remains the whole day in court without allowing the business to be interrupted.' Kaut.[325] (I. 19) gives the advice that, when in court, the king should not cause petitioners or litigants to wait long at the door, for when a king makes himself inaccessible, those who are near him create confusion about what should or should not be done, whereby the king engenders disaffection among his subjects and makes himself a prey to his foes. The king's court[326] of justice was called *dharmasthāna* (Śaṅkha-Likhita), *dharmāsana* (Nārada I. 34, Manu VIII. 23, Śukra IV. 5·46) or *dharmādhikaraṇa* (Kātyāyana and Śukra IV. 5·44). 'The place where the decision of the truth of the plaint (lit. the cause or root of dispute) is carried on by a consideration of the rules of the sacred law is called the *dharmādhikaraṇa* (the Hall of Justice)'—says Kātyāyana. Kālidāsa (Śākuntala V) and Bhavabhūti (Uttararāmcarita I.) employ the word dharmāsana.

The authors of smṛtis believed that there was a golden age or era of perfect virtue in the dim past, when men were bent only on right conduct, that later ages saw the advent of sinful

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324. अर्थिनामुपसन्नानां यस्तु नोपैति दर्शनम्। सुखे प्रसक्तो नृपतिः स तप्येत नृगो यथा॥ महाभारत quoted by दण्डविवेक p. 13; अर्थिनां कार्यसिद्ध्यर्थं यस्मात्त्वं नेषि दर्शनम्॥ अदृश्यः सर्वभूतानां कृकलासो भविष्यसि। ... कार्यार्थिनां विमर्दो हि राज्ञां दोषाय कल्पते। रामायण, उत्तरकाण्ड 53. 18, 19, 25; पौरकार्याणि यो राजा न करोति सुखे स्थितः। स्पष्टं स नरके घोरे पच्यते नात्र संशयः॥ शुक्र IV. 5. 8; vide उत्तरकाण्ड 53. 6 for very similar words; शङ्खलिखितौ। राजा स्वाधीनवृत्तिरात्मप्रत्ययकोशः स्वयं कृत्यानुदर्शी विप्रस्वनिवृत्तश्चिरं भद्राणि पश्यति। राजनीतिप्र. p. 134.

325. उपस्थानगतः कार्यार्थिनामद्वारासङ्गं कारयेत्। दुर्दर्शो हि राजा कार्याकार्यविपर्यासमासन्नैः कार्यते। तेन प्रकृतिकोपमरिवशं वा गच्छेत्। अर्थशास्त्र I. 19.

326. धर्मस्थानं प्राच्यां दिशि तच्चाभ्युदकैः समेतं स्यात्। शङ्ख q. in स्मृतिच. (II. p. 19); धर्मशास्त्रविचारेण मूलसारविवेचनम्। यत्राधिक्रियते स्थाने धर्माधिकरणं हि तत्॥ कात्या० q. in स्मृतिच० (II, p. 19), परा. मा. III. 1 p. 22. The व्य. म. p. 8 reads धर्मशास्त्रानुसारेण अर्थशास्त्रविवेचनम्. The verse as thus read is the same as Śukra IV. 5. 44. Vide स. वि. p. 63 'यत्र स्थाने आवेदितव्यतत्त्वनिष्कर्षः धर्मशास्त्रविचारेण निर्णेतृभिः क्रियते इति धर्मस्थानम्। अस्यैव धर्माधिकरणमिति नामान्तरम्।'

promptings, that therefore regulation of life by the learned and the king came into vogue (compare Gaut. VIII. 1). Manu I. 81–82 (= Śāntiparva 231. 23–24) state that in the Kṛta age dharma prevailed in its perfection, there was no advent of adharma among men then and that in each of the three succeeding *yugas* dharma declined progressively by the introduction of theft, falsehood and deceit. The Śāntiparva (59. 13 ff) narrates that in the Kṛta age there was no king and no punishment, that gradually kāma (lust) and rāga (passion) began to wield sway and dharma dwindled away. This belief in an ideal or perfect past was universal and was probably depicted in order to induce men to rise higher and higher in goodness and virtue and to make them submit easily to the discipline of government and the priestly requirements. This ideal description of the past is often found associated with the picture of anarchy that reigned in the dim past which was retrieved from horrors by the creation of the kingly office (vide pp. 30–34 above). These diametrically opposite views of the past contained in the same works (such as Manu and the Mahābhārata) probably owe their origin to the desire of the writers to make the common people submit to the absolute rule of kings. Almost all works even from the Ṛgveda (X. 10. 10) downwards believe in the progressive deterioration of religion and morals. A state of anarchy is visualised in a few works only for the purpose of glorifying the great usefulness of the institution of kingship. Nār. I. 1 states[327] 'when people were solely bent on dharma and were truthful, there existed neither administration of law and justice nor hatred nor jealousy. When dharma declined (or disappeared) among men, administration of law and justice came to be introduced and the king was declared to be the decider of disputes and the chastiser (of the guilty)'. Bṛ. also (S. B. E. 33 p. 277) says 'In bygone ages men were pre-eminently virtuous and free from cruel tendencies; now that men are overwhelmed by greed and hatred, judicial procedure has to be declared'.

The idea of Dharma took the place of the very ancient conception of *ṛta*. In the Ṛgveda ṛta denotes the supreme

327. धर्मैकतानाः पुरुषा यदासन्सत्यवादिनः । तदा न व्यवहारोऽभून्न द्वेषो नापि मत्सरः । नष्टे धर्मे मनुष्याणां व्यवहारः प्रवर्तते । द्रष्टा च व्यवहाराणां राजा दण्डधरः स्मृतः ॥ नारद I. 1–2; धर्मप्रधानाः पुरुषाः पूर्वमासन्नहिंसकाः । लोभद्वेषाभिभूतानां व्यवहारः प्रकीर्तितः ॥ बृह. q. by स्मृतिच. II p. 1, व्य.प्र. p. 4. Compare Plato in 'Laws' (Book IV p. 485 of the Random House edition) 'There is a tradition of the happy life of mankind in days when all things were spontaneous and abundant'.

transcendental law or the cosmic order by which the universe and even the gods are governed and which is intimately connected with sacrifice. Vide Ṛg. I. 68. 2, I. 105. 12, I. 136. 2, I. 142. 7, I. 164. 11, II. 28. 4, IV. 23. 8–10 (in which the word ṛta occurs ten times), X. 190. 1. On the relation of ṛta and law Berolzheimer in his 'The world's legal philosophies' (translated by Jastrow, New York, 1929) says: "closely connected with the religious and philosophical views of the Aryans are certain fundamental positions in regard to the philosophy of law which in turn became the antecedents of later legal and ethical developments among the Greeks and Romans. Foremost among these philosophical conceptions is 'rita', which is at once the organized principle of the universe and the divine ordering of earthly life; as the former it regulates the appearance of the sun and the moon, of day and night and embodies the unchangeable principle that pervades the succession of phenomena; as the latter it is affiliated with purpose and human benefit and is exemplified in the flow of the rivers which fertilize the fields; in the cattle useful to men; in the institutions of marriage, of the monarchical state, of the patriarchal home; and in man's sense of responsibility for his sins. The derivative conceptions of 'vrata', 'dharma', 'dhāma', 'svadhā' represent special aspects of 'rita'; thus 'vrata' refers to any specialized embodied 'rita'; while 'dharma' refers specifically to the moral function of rewarding good and punishing evil" (pp. 37–38). Vide Prof. V. M. Apte's paper or 'Ṛta' in the Ṛgveda (pp. 55–60 of the Silver Jubilee Volume of the Annals of the B. O. R. Institute) in which he tries to prove that ṛta means primarily 'the belt of the Zodiac'.

The word *vyavahāra* is used in several senses in the *sūtras* and *smṛtis*. One meaning of vyavahāra is 'transaction or dealing' as in Udyogaparva 37. 30 quoted above (on p. 207) or in Āp. Dh. S. II. 7·16·17, I. 6·20. 11 and 16. It also means 'a dispute, a lawsuit' in Śānti 69·28, Manu VIII. 1., Vas. 16·1, Yāj. II. 1., Viṣṇu Dh. S. III. 72, Nār. I. 1 and 2, Śukra IV. 5·5. A third sense is 'legal capacity to enter into transactions' (as in Gaut. X. 48,

Vas. 16·8, Śaṅkha-Likhita (*rakṣed rājā bālānām dhanānyaprāpta-vyavahārāṇām* &c. quoted in V. R. p. 599). A fourth but a rare sense is 'the means of deciding a matter' (as in Gaut. XI. 19 'tasya *vyavahāro* vedo dharmaśāstrāṇyaṅgāni &c.). In this chapter the word vyavahāra is taken to mean 'law-suit or dispute in a court' and 'legal procedure'. This sense is very ancient. In the Delhi-Topra Pillar Edict No. 1 of Aśoka (Corpus I. I. vol. I. p. 123) we have the word 'viyohālasamatā' (vyavahārasamatā) and the word 'vyavahāravidhi' occurs in Kharavela's Hāthigumphā Inscription (E. I. vol. XX. p. 79). A 'vohārika-mahāmatta' (vyāvahārika-mahāmātra, minister of justice) occurs in the Mahāvagga, I. 40. 3 and Chullavagga VI. 4·9). In the medieval digests, both law and procedure are sometimes dealt with in one book as in the Vyavahāra-nirṇaya of Varadarāja and the Vyavahāra-mayūkha; sometimes the titles of law are treated of in one work and judicial procedure in another. For example, Caṇḍeśvara composed the Vivādaratnākara (on titles of law) and Vyavahāraratnākara (on judicial procedure). The word vyavahāra is restricted in some works to judicial procedure alone (as in the Vyavahāramātṛkā of Jīmūtavāhana and the Vyavahāratattva of Raghunandana). The word *vivāda* which means 'dispute' is often used as a synonym for vyavahāra in the sense of law-suit or legal procedure or both. In Āp. Dh. S. II. 11·29·5 and in Nār. I. 5 *vivāda* means 'law-suit'. In the Vivādacandra of Misarumiśra and the Vivādatāṇḍava of Kamalākara both law and judicial procedure are treated of. Yāj. (II. 8 and 305) appears to distinguish between *vivāda* (law-suit) and *vyavahāra* (judicial procedure).

The word '*vyavahāra*' is defined by several smṛtis and commentators. Kātyāyana gives two definitions, one based on etymology and referring principally to procedure and the other giving the conventional sense having in view a dispute. "The (*upasarga*) *vi* is employed in the sense of 'various', '*ava*' in the sense of 'doubt', '*hāra*' means 'removing'; *vyavahāra* is so called because of its removing various doubts" (quoted by V. M.

p. 283, Par. M. III. p. 7 and Kullūka on Manu VIII. 1).[327a] This definition places the administration of justice on a high plane. The purpose of all branches of Indian philosophy is the quest of Truth or Reality. The purpose of legal procedure is, according to Kāt., the same viz. to find out the truth when there is a dispute. But there are some points of difference. The philosopher may take his own time in his search for truth; but justice has to be done as quickly as possible. Further, legal procedure has its own method and limitations in finding out the truth, that is, it depends on oral and documentary evidence, while a philosopher's quest of truth may be purely intellectual and subjective. Another definition is: 'When the ramifications of right conduct, that are together called dharma and that can be established with efforts (of various kinds such as truthful speech &c.), have been violated, the dispute (in a court between parties) which springs from what is sought to be proved (such as a debt), is said to be *vyavahāra*'. Hārīta gives an easier definition: 'that is declared to be *vyavahāra* where the attainment of ŏne's wealth (taken away by another) and the avoidance of the dharmas of others (such as those of heretics) are secured with (the help of) the means of proof' (quoted by the Sm. C. II. p. 1). The Mit. (on Yāj. II. 1) defines vyavahāra as 'averment (about a matter) as related to oneself in opposition to another'. Śukra IV. 5. 4 gives another definition. The Vyavahāramayūkha gives a much

327 a. वि नानार्थेऽव सन्देहे हरणं हार उच्यते । नानासन्देहहरणाद् व्यवहार इति स्मृतः ॥ कात्या. quoted in व्य. मा. p. 283, कुल्लूक on मनु VIII. 1, दीपकलिका p. 36, which says 'ऋणादानादिनानाविवादपदविषयः निराक्रियतेऽनेनेति नानासंशयहारी विचारः व्यवहारः ।'; प्रयत्नसाध्ये विच्छिन्ने धर्माख्ये न्यायविस्तरे । साध्यमूलस्तु यो वादो व्यवहारः स उच्यते ॥ अपरार्क p. 596, स्मृतिच. (II. p. 1), परा. मा. III. pp. 5-7, व्य. प्र. pp. 3-4. This last verse is variously explained. Vide my notes to Kāt. 25. The मदनरत्न (व्यव. Ms. in my possession) explains 'प्रयत्नसाध्ये कष्टसाध्ये गृहक्षेत्रादिके विषये विच्छिन्ने स्वेच्छया भोक्तुमशक्ये सति न्यायविस्तरे न्यायः प्रमाणं विस्तीर्यते प्रपञ्च्यते निर्णीयते यस्मिंस्तस्मिन् धर्माख्ये धर्मनामके धर्माधिकरणमिति प्रसिद्धे सभालक्षणे स्थले साध्यमूलको यो गृहक्षेत्रादिविषयो वादः स व्यवहार इति ।'; स्वधनस्य यथा प्राप्तिः परधर्मस्य वर्जनम् । न्यायेन यत्र क्रियते व्यवहारः स उच्यते ॥ हारीत q. by स्मृतिच. (II. p. 1).

more elaborate definition (vide text p. 1 and notes pp. 3–4 of my ed.).

A *vyavahārapada*[328] means 'the topic or subject matter of litigation or dispute'. It is the same thing as 'vivādapada' which word occurs also in Kauṭ. (III.·16 p. 191 and IV. 7 p. 218) and in Nār. (dattāpradānika 1, abhyupetyāśuśrūṣā 1). Manu VIII. 8 shows that '*pada*' means '*sthāna*'. Yāj. II. 5 defines it as 'If a person, who is set at naught by others in a manner that is opposed to the rules of smṛti and to good usage or conventions, informs the king (or his judge), that is a *vyavahārapada*'. From very ancient times eighteen vyavahārapadas have been enumerated. The underlying idea is that most of the disputes between men can be classified under 18 heads. Even Manu (VIII. 8) was conscious of the fact that the enumeration of 18 vyavahārapadas was a matter of a convenient arrangement and that the number 18 did not embrace all disputes whatever but only the largest number of disputes and the most important among them. Medhātithi and Kullūka make this position quite clear.[329]

There is some difference about the number and nomenclature of the vyavahārapadas among Manu and other writers of smṛtis. The following table will give some idea of the divergence as to nomenclature and the sequence in which they are treated of. All do not mention them in the same order as in Manu VIII. 4–7. For example, the order in Yāj. is ṛṇādāna, upanidhi, dāyavibhāga, sīmā-vivāda, svāmipālavivāda, asvāmivikraya &c. Yāj. does not enumerate all of them in one place as Manu and Nārada do.

328. व्यवहारः तस्य पदं विषयः । मिता० on या. II. 6; पदं स्थानं निमित्तमिति यावत् । अपरार्क on the same.

329. भूयिष्ठग्रहणं प्राधान्यख्यापनार्थम् । अन्येऽपि व्यवहारहेतवः सन्ति यथा मिथःसमार्थं त्वया मे चेदम वृत्तं तत्र किमित्यर्वाक्संवत्सराद्व्यस्मै बृहासीति न चेदं वृत्तानपकर्म न चात्र स्वत्वनिवृत्तिरस्ति भोगाद्वशामात्रं वसतः । मेधा. on मनु VIII. 8; भूयिष्ठशब्देनान्यान्यपि विवादपदानि सन्तीति सूचयति । तानि च प्रकीर्णकशब्देन नारदाद्युक्तानि । कुल्लूक on the same.

MANU	KAUṬILYA	YĀJÑAVALKYA (acc. to Mit.)	NĀRADA	BṚHASPATI (in Sm. C. II. p. 9)
1 ṛṇādāna	5 ṛṇādāna	1 ṛṇādāna	1 ṛṇādāna	1 kusīda
2 nikṣepa	6 upanidhi	2 upanidhi	2 nikṣepa	2 nidhi
3 asvāmivikraya	11 asvāmivikraya	6 asvāmivikraya	7 asvāmivikraya	8 asvāmivikraya
4 sambhūya-samutthāna	8 sambhūya-samutthāna	17 sambhūya-samutthāna	3 sambhūyasamutthāna	4 sambhūyotthāna
5 dattasyānapākarma	10 dattasyānapākarma (in III. 13 bare mention)	7 dattāpradānika	4 dattāpradānika	3 adeyādya
6 vetanādāna	7 karmakarakalpa	11 vetanādāna	6 vetanasyānapākarma	5 bhṛtyadāna
7 saṁvidvyatikrama	4 samayasyānapākarma	10 saṁvid-vyatikrama	10 samayasyānapākarma	10 samayātikrama
8 krayavikrayānuśaya	9 vikrītakrītānuśaya	8 krītānuśaya } 16 vikrīyāsampradāna }	9 krītānuśaya } 8 vikrīyāsampradāna }	9 krayavikrayānuśaya
9 svāmipālavivāda	0	5 svāmipālavivāda	0	0
10 sīmāvivāda	3 sīmāvivāda	4 sīmāvivāda	11 kṣetrajavivāda	7 bhūvāda
11 vākpāruṣya	13 vākpāruṣya	13 vākpāruṣya	15 vākpāruṣya	15 vākpāruṣya
12 daṇḍapāruṣya	14 daṇḍapāruṣya	14 daṇḍapāruṣya	16 daṇḍapāruṣya	16 daṇḍapāruṣya
13 steya	0	18 steya	0	12 steya
14 sāhasa	12 sāhasa	15 sāhasa	14 sāhasa	17 vadha
15 strīsaṅgrahaṇa	saṅgrahaṇa (IV. 12)	19 strīsaṅgrahaṇa	0	18 strīsaṅgraha
16 strīpundharma	1 (no name but subject dealt with in III. 2–4)	0	12 strīpuṁsayoga	11 strīpuṁsayoga
17 vibhāga	2 dāyavibhāga	3 dāyavibhāga	13 dāyabhāga	13 dāyabhāga
18 dyūtasamāhvaya	15 dyūtasamāhvaya	12 dyūtasamāhvaya	17 dyūtasamāhvaya	14 akṣadevana
0	0	9 abhyupetyāśuśrūṣā	5 abhyupetyāśuśrūṣā	6 aśuśrūṣā
0	16 prakīrṇaka	20 prakīrṇaka	18 prakīrṇaka	19 prakīrṇaka

It will be noticed that Yāj. omits the duties of husband and wife from the 18 topics of vyavahāra as he had already dealt with them in his section on *ācāra*, adds *abhyupetyāśuśrūṣā* and *prakīrṇaka* (miscellaneous wrongs) and splits krayavikrayānuśaya into two and thus gives 20 topics. Nārada (I. 16–19) has the same 15 topics as those of Manu (in some cases under slightly different names), omits svāmipālavivādā, steya and strīsaṅgrahaṇa, adds abhyupetyāśuśrūṣā and another topic viz. prakīrṇaka and splits krayavikrayānuśaya into two, viz. *krītānuśaya* and *vikrīyāsampradāna*. He includes *steya* under *sāhasa* (sāhasa verse 21) and also in what is an appendix. Bṛhaspati as quoted in the Smṛti-candrikā (vyavahāra p. 9) names the 18 vyavahārapadas and adds prakīrṇaka. Kauṭilya also adds prakīrṇaka and omits 'steya' under his dharmasthīya section, though he deals with theft elsewhere (as in IV. 8 and 11). It is not to be supposed that the 18 topics were first started by the Manusmṛti. Gaut. XII. 1 mentions *vākpāruṣya* and *daṇḍapāruṣya*, treats of some of the topics without specifying the technical names e. g. he refers to the subjects of saṅgrahaṇa (in XII. 2–3), of theft (XII. 12–13), of svāmipālavivāda (in XII. 16 ff), of ṛṇādāna (in XII. 26–33), of nidhi (in XII. 39), of dāyavibhāga (in XXVIII). Similarly the Āp. Dh. S. speaks in scattered places of some of the topics of vyavahāra such as murder (i. e. *sāhasa*) in I. 9. 24, of adultery in I. 9. 25. 1–2 and I. 10. 28. 15–20, II. 10. 26. 18 ff, theft in I. 9. 25. 4–11, dāyavibhāga in II. 6. 14, vākpāruṣya in II. 10. 27. 14. Vas. also mentions the word dāyavibhāga (in XVII. 40) and sets out rules about it and about means of proof (XVI. 13–15), about *ṛṇādāna* (XVI. 31), about the twelve kinds of sons (XVII. 12–39). The Baud. Dh. S. (II. 2. 8) employs the word dāyavibhāga and gives several rules on that subject. Thus some at least out of the eighteen vyavahārapadas (such as vākpāruṣya, daṇḍapāruṣya, dāyabhāga, steya) were distinctly recognized centuries before the present Manusmṛti was composed. Someśvara in Mānasollāsa (II. 20. verses 1265–1273) enumerates 22 vyavahārapadas, by splitting dattasyānapākarma into two as *datta* and *dattāpahāraka*, adds svāmibhṛtyavivāda after svāmipālavivāda, counts krayavikrayānuśaya as two and dyūtasamāhvaya as two distinct topics.

The definition of *vyavahārapada* in Yāj. II. 5 (= Śukra IV. 5. 68) viz. 'if a person informs or complains to the king' (*āvedayati ced rājñe*) conveys that vyavahārapada means and includes only those disputes that are started or brought before

the Court at the instance of the parties. Manu VIII. 43 prescribes that neither the king nor his officers should start a dispute (i. e. a legal proceeding), nor should he sit silent upon (hush up) a matter which has been brought before him by another (i. e. by a party). Gaut. XIII. 27 lays down that a party should humbly approach a judge with his complaint. Kātyāyana (27) states: 'The king[330] should not, through influence or through greed of money, take upon himself the disputes of men, when they do not themselves want to contend (in a court)'. Mānasollāsa II. 20 verse 1274 and Śukra IV. 5. 69 say the same. There must have always been several matters, of which nobody might complain and which the king might have to look into *suo motu*. Manu after dealing with the 18 vyavahārapadas (in VIII. 1 to IX. 251) requires the king (in IX. 252–253) to make efforts to destroy kaṇṭakas (thorns, harmful persons) and dilates upon many aspects of his activities in this respect. Nārada relegates all matters in which the king took action *suo motu* to a separate topic, prakīrṇaka, about which he says 'under prakīrṇaka are comprised lawsuits depending on the king (i. e. on the king's own action) such as transgressions of the king's commandments and obedience to his injunctions, grants of towns, dissensions among the constituent elements (such as ministers) of the State, the duties and breaches there of among heretics, followers of the veda, corporations (of merchants) and groups, dispute between father and son, neglect of prescribed penances, abstraction of gifts made to worthy persons, the wrath of hermits, sinful confusion of castes and the rules regarding their maintenance and (in short) whatever (matter) has been omitted in the preceding (vyavahārapadas)—these are treated under prakīrṇaka'.[331] Bṛhaspati defines prakīrṇaka in

330. न राजा तु वशित्वेन धनलोभेन वा पुनः । स्वयं कार्याणि कुर्वीत नराणामविवादिनाम् ॥ कात्यायन q. by कुल्लूक on मनु VIII. 43, व्य. मा. p. 285 (which reads न वागमविवादिनाम्); स्वयं नोत्पादयेत्कार्यं समर्थः पृथिवीपतिः । नावदीत तथोत्कोचं दत्तं कार्यार्थिना नृपः ॥ मानसोल्लास II, 20. 1274.

331. प्रकीर्णके पुनर्ज्ञेयो व्यवहारो नृपाश्रयः । राज्ञामाज्ञाप्रतीघातस्तत्कर्मकरणं तथा ॥ पुरप्रदानं संभेदः प्रकृतीनां तथैव च । पाखण्डिनैगमश्रेणीगणधर्मविपर्ययः । पितापुत्रविवादश्च प्रायश्चित्तव्यतिक्रमः । प्रतिग्रहविलोपश्च कोपश्चाश्रमिणामपि । वर्णसङ्करदोषश्च तद्वृत्तिनियमस्तथा । न दृष्टं यच्च पूर्वेषु सर्वं तत्स्यात्प्रकीर्णकम् ॥ नारद (प्रकीर्णक 1–4) quoted by the मिता. on या. II. 295. The स्मृतिच० (II. p. 331) reads पुरप्रमाणं and explains पौरचरितलेख्यप्रमाणम्. तत्र बृहस्पतिः । एष वादिकृतः प्रोक्तो व्यवहारः समासतः । नृपाश्रयं प्रवक्ष्यामि व्यवहारं प्रकीर्णकम् ॥ स्मृतिच० II. p. 331.

(Continued on the next page)

the same way as Nārada. Kauṭilya deals with the vyavahārapadas in his Dharmasthīya (III) section and in the Kaṇṭakaśodhana section (IV) speaks of matters that are similarly dealt with by officers called *pradeṣṭṛs* (who correspond to coroners and police magistrates of modern times), while matters falling under the dharmasthīya section (viz. the vyavahārapadas) were disposed off by judges (called *dharmasthas*). Kaṇṭaka means in Kauṭilya as in Manu IX. 252 'harmful persons'. The chief matters that fell within the purview of the kaṇṭakaśodhana (removal or punishment of harmful persons) officers or courts were : Artisans like blacksmiths and carpenters were generally to work in guilds and receive from people materials for working them up ; if they caused unreasonable delay in handing back finished articles, they were to receive one-fourth less than the proper wages and were to be fined twice the amount of wages ; similar provisions are made for loss of wages and fines for weavers who do not increase the weight of cloth (cotton, linen, silk or woollen) woven up to the usual standard : washermen were to wash clothes on wooden planks or smooth stones, but if they washed them elsewhere, they were to pay compensation for loss caused and a fine of 6 *paṇas* ; they were to be fined twelve paṇas for the sale, pledge or hiring out of other's clothes ; they were also to be fined for keeping clothes with them beyond the time ordinarily required ; for washing the best garments, garments of middling quality and inferior garments the wages were respectively one paṇa, ½ and ¼ ; trustworthy persons and experts were to decide disputes about colour and wages ; similar rules apply to tailors ; goldsmiths, who

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In an interesting paper contributed to the Sir Denison Ross volume of papers pp. 234–240 Dr. V. Raghavan describes a work called 'Vaiśyavaṁśasudhākara' composed by Kolācala Mallinātha, the renowned commentator of the five classical Sanskrit Kāvyas. This work is the report or decision given by a commission presided over by Mallinātha appointed to settle a dispute (which in these days might be called a caste question not cognisable by civil courts) that arose in the times of Devarāya II. of Vidyānagara (1422–1466 A. D.). Vaiśyas were given a license to trade in the 24 cities and 108 shrines of the realm ; certain subcastes like the Komaṭis claimed to be vaiśyas and this privilege also. Mallinātha decides after a searching examination of authorities that the words vaiśya, vaṇik, nāgara, ūruja, tṛtīyajātīya are synonyms, that Komaṭis, who were styled vijātis by their rivals, were vaiśyas and entitled to all the privileges of vaiśyas. This decision would come under either पाषण्ड ... विपर्ययः or तद्वृत्तिनियमः.

without informing (government officers) purchased from unclean hands (i. e. from menial servants or slaves) without changing the form of the article or after changing the form, or purchased from a thief were to be fined respectively 12, 24 or 48 paṇas; for stealing one (gold) māṣaka (one-sixteenth of a suvarṇa) from off a suvarṇa, the gold-smith was to be fined two hundred paṇas and for stealing one māṣaka out of a silver *dharaṇa* there was a fine of twelve paṇas; fines are provided for loss of weight (beyond the recognised standard) in the case of working up copper, lead, brass, bell-metal, tin into vessels and articles; for manufacturing a counterfeit coin, for accepting it or passing it off to another the fine was a thousand paṇas and for entering a counterfeit coin in the royal treasury the punishment was death; a physician, who undertook the medical treatment of a patient without informing (government officers) of the dangerous nature of the disease, was to be punished with the first amercement if the patient died and with the middling fine if the patient died through the carelessness of the physician and if the patient suffered some vital injury, the matter was to be dealt with as assault (daṇḍapāruṣya); musicians and actors shall stay in one place during the rainy season and shall avoid taking excessive gifts or indulging in excessive praise of one patron; for violating this rule the fine was twelve paṇas. The same rules apply to those who show dumb plays and to other mendicants, the latter receiving as many lashes as the fine imposed in similar cases on others. In IV. 2 Kauṭilya prescribes fines against merchants that use false measures, weights and balances; that sell timber, iron, jewels, ropes, clothes misrepresenting them as superior when they are inferior; that conspire to prevent the sale of merchandise; that cause adulteration of grains, oils, salt, medicines &c.; that raise the prices beyond those fixed by the superintendent of commerce for local commodities and for foreign produce. In IV. 3 Kaut. provides for measures against such calamities as fire, floods, pestilential diseases, famine, rats, tigers, serpents and prescribes a fine of twelve paṇas for catching or injuring cats and mongooses employed to destroy rats. In IV. 4 Kauṭ. prescribes the measures that the officer called samāhartṛ has to take to protect the subjects against those who prey upon the people secretly by employing foul means. He has to employ spies under various disguises to find out the honesty or corruption of officers in the villages, of superintendents, of judges, of magistrates and witnesses and the punishment in these cases is generally

banishment. Kauṭilya IV. 5 deals with the detection of young men inclined to robbery and adultery by the employment of spies and agents *provocateurs* in the guise of ascetics and persons reputed to possess miraculous powers. The Kauṭilīya IV. 6 and 7 respectively describe the seizure of criminals on suspicion or in the very act itself and examination in cases of sudden death. Kauṭ. IV. 8 speaks of questioning in the presence of the wronged party of the witnesses of the accused, whether they are his relatives or total strangers, as regards the country, the caste, the family, the name, occupation, property, friends and residence of the accused and of the application of torture to the accused to elicit an admission of guilt. It is said that torture is to be applied only in the case of those whose guilt is believed to be established *prima facie* (*āptadoṣam karma kārayet*), that torture is not to be employed when the accused is guilty of a minor offence, is under age, old or diseased, is under the influence of intoxicants, or is a lunatic, or is overwhelmed by hunger or thirst or fatigue due to a journey, or has eaten to excess or is suffering from indigestion or is weak, nor is it to be employed in the case of a pregnant woman or a woman who was delivered of a child within a month; and in the case of other women only half the torture prescribed for males or only the asking of questions is to be employed. Learned brāhmaṇas and ascetics (when accused) are to be subjected to espionage only. Those who violate these rules or incite others to do so and those who are guilty of causing the death of an accused by torture are to be punished with the highest amercement. Four kinds of torture were employed in the case of complaints about wrongs viz. six daṇḍas, seven whippings, two kinds of suspension, and (fourthly) water-tube (i. e. injecting salt water in the nose from a tube).[332] In this chapter Kauṭ. states that one who

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332. The exact meaning of the four kinds of torture is not clear. Prof. V. R. Dikshitar in ' Hindu Administrative Institutions ' pp. 237-247 tries very hard to establish that Kauṭ. recommends no torture in any case, that ' *vākyānuyoga* ' means 'pronouncing of guilt by the jury' and *karmānuyoga* means ' judgment of the Chief Justice '. Though the learned Professor's attempt to exculpate Kauṭilya may be due to laudable motives, the words of Kauṭilya are too clear to admit of any other interpretation than the one given above. If one dispassionately considers the fact that no *karma* was allowed to be employed in the case of the weak, the diseased, old men &c., that in the case of women '*ardhakarma*' alone was allowed, that a heavy fine was imposed for causing death by *karma* (*karmaṇā vyāpādanena*).

(*Continued on the next page*)

charges an innocent man with being a thief or who conceals a thief is to be punished like a thief and that even one who is not a thief may for fear of torture admit that he is a thief, as Māṇḍavya did. Kauṭ. in IV. 9 prescribes that the *samāhartṛ* and *pradeṣṭṛs* should exercise control over all superintendents of the various State departments and their subordinates, that those who steal or seize valuable articles or jewels from State mines or manufactories should be simply sentenced to death, prescribes various fines and punishments for stealing or removing by force articles of different prices from the State granaries and store-houses, provides punishment for judges that threaten, browbeat, send out or unjustly silence or abuse litigants or that do not ask proper questions or ask improper questions, that cause unnecessary delay, unjustly rehear causes that have been heard or disposed of, and provides heavy punish-

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(*Continued from the last page*)

that Māṇḍavya, though really not a thief, declared that he was so through the fear of the torments of *karma* (*karmakleśabhayāt*), that in the four karmas we find suspension and water-tube and that immediately after the words '*karma kārayet*' we get the rule that in all crimes the brāhmaṇa was not to be subjected to bodily pain, it will have to be admitted that '*karma*' in this chapter of the Arthaśāstra means 'torture'. One fails to see what 'ardhakarma' in the case of women will mean if 'karma' signifies only the judgment of the chief justice or why Māṇḍavya should have confessed theft through fear of 'karmakleśa'. And one need not feel apologetic if Kauṭilya recommends torture in certain well-defined cases. Torture was an essential part in the Roman Criminal Procedure and Augustus had issued an edict about it. Vide Stephens' 'History of English Criminal Law' vol. I. pp, 47–49. Torture by the police and third-degree methods are not unknown in the 20th century in the West (even apart from the latest German methods) or in India, though they are not expressly mentioned in any text-book or Act as allowable. Vide Harry E. Barnes' 'Story of Punishment' pp. 10–15 for various kinds of tortures employed in the West for several centuries and third-degree methods (pp. 15–24), which he asserts are even now in almost universal use by the Police Department in the U. S. A. The story of Māṇḍavya who though not a thief was held to be a thief, because he, owing to his vow of silence, did not reply when questioned and near whom was found the booty stolen and who was impaled, is found in Ādi. 63. 92–93 (cr. ed. chap. 57), Ādi. 107–108 (cr. ed. chap. 101), Anuśāsana 18. 46–50 and in Nār. (I. 42) and Bṛ. quoted by Aparārka (p. 599). शूले प्रोतः पुराणर्षिरचोरश्चोरशङ्कया । अणीमाण्डव्य इत्येवं विख्यातः सुमहायशाः ॥ आदि 63. 92–93. Kauṭ. IV. 8 appears to have had a different version of the story before him. The Mārkaṇḍeyapurāṇa chap. 16 has the story of Aṇimāṇḍavya. The story of Māṇḍavya was a leading case, it appears, in criminal law. The Mṛcchakaṭika (Act IX. 36) appears to refer to torture.

ments for releasing persons jailed or for rape on a woman in a lock-up. Kauṭ. IV. 10 prescribes alternative punishments of fines in lieu of the cutting off of fingers or mutilation of limbs for several offences such as theft or assault, abuse and defamation or showing contempt to the king by riding his horse or other conveyance or fabricating royal orders, prescribes death for selling human flesh, simple death or highest amercement for stealing images of gods or animals, for abducting human beings or for wrongfully seizing fields, houses, gold, gold coins, jewels and crops. Death with or without torture is provided for in Kauṭ. IV. 11 for murdering a man in a quarrel (but when the wounded man dies a fortnight or a month after the quarrel, highest fine or fine of five hundred *paṇas* and the expenses of medical treatment); different kinds of punishments are provided for wounding with a weapon, impalement for causing violent death of men and women, burning alive for those who aim at securing the kingdom or force entrance into the royal harem or incite wild tribes or enemies or instigate disaffection in the capital or country or army, drowning (or solitary confinement in a dark room, acc. to another reading) for a brāhmaṇa offender of this sort, cutting of tongue for insulting or abuse of parents or a teacher or an ascetic, drowning for one destroying the dam of a tank or for a poisoner or for a woman murdering a man, tearing to death by bulls for a woman who murders her husband or child or her elders or administers poison or sets fire. Kauṭ. adds that the punishment of death with torture has been prescribed by ancient smṛti-writers, but that it is proper to order simple death in cases of offences in which no cruelty enters. Kauṭ. IV. 12 starts by declaring that no man shall have sexual intercourse with a woman (not his wife) against her will, prescribes different punishments for forcible sexual intercourse with an immature girl or a girl that has attained maturity, of the same caste, or of a different caste, provides that for intercourse with a willing maiden the fine will be 54 paṇas for the man and 27 for the maiden, further provides that it is no offence for a man of the same caste to have intercourse with a maiden who has not been got married for three years after the appearance of menses, provides fines for deceitfulness in substituting one girl at marriage while showing another before, provides that if a woman whose husband is gone abroad commits adultery a relative or servant of the husband may keep her under restraint and that if the husband on his return forgives the woman her paramour may not be proceeded against,

but if he does not condone, the nose and ears of the woman may be cut off and the paramour should be sentenced to death. Kauṭ. IV. 13 provides punishment for brāhmaṇas eating or drinking what is forbidden to them and varying fines for administering forbidden food or drink to members of the four varṇas, provides fines for house-trespass and lurking house-trespass by night, provides punishments for witchcraft, provides burning alive in a vessel for adultery with the queen and other punishments for adultery with women of the several castes, whether guarded or unguarded, prescribes a fine of 24 paṇas for adultery with a nun.

The above is a meagre summary of Kauṭilya's section on kaṇṭakaśodhana. Kauṭilya is encyclopaedic on this subject as on several others. The number of offences dealt with by him is very large and his treatment in some respects compares favourably with such modern criminal codes as the Indian Penal Code. Many of the provisions contained in Kauṭ. IV are found in Yāj. (II. 273–304), in Nārada (in prakīrṇaka and elsewhere) and also in Manu (e. g. VIII. 365–368 about rape or adultery, VIII. 396–97 about washermen and weavers, IX. 225–226 about musicians and dancers, IX. 231–232, IX. 261–267). Why Kauṭ. treats of several offences under kaṇṭakaśodhana and not under the dharmasthīya section, it is somewhat difficult to say. It is probable that he included under dharmasthīya only those complaints or actions that were fought out between the parties, even though many of the wrongs complained of under vākpāruṣya, daṇḍapāruṣya, saṅgrahaṇa and steya were criminal and the same as those treated of in the section on kaṇṭakaśodhana. In wrongs dealt with in the kaṇṭakaśodhana section it was the king or king's officers who themselves brought up the offenders for punishment and the offences were viewed not as mere private matters, but as matters in which the State was concerned for the eradication of crime in general. Kauṭilya in III. 20 speaks of *prakīrṇaka* but therein he seems to include some miscellaneous matters like non-return of borrowed articles or deposits (at the proper time and place), evading payment of ferry tax under the pretence of being a brāhmaṇa, connection with a public woman kept by another, misappropriating revenue collected as agent for a householder, a cāṇḍāla's touching an Ārya woman, inviting for dinner in honour of Gods and Manes Buddhist or Ājīvaka or Śudra mendicants, abandonment of parents, child, wife or husband, brother or sister, teacher or pupil (when not

guilty of a grave sin), wrongful confinement of a person &c. Kauṭilya does not apparently include under prakīrṇaka all matters in which the king acts *suo motu* as Nār., Bṛ. and Kāt. do but includes these latter under kaṇṭakaśodhana. He, however, states here and there (IV. 1 and 13) that the matters dealt with under kaṇṭakaśodhana are quite analogous to those under such titles as daṇḍapāruṣya treated of under the dharmasthīya section. For example, in IV. 1. he says that if a physician through negligence causes loss of a vital part to a patient then the matter may be treated as daṇḍapāruṣya.[333] So Kauṭilya probably represents a much earlier stage of judicial administration than Nār. or Bṛ., who included under prakīrṇaka all matters in which the king acted of his own motion (i. e. all that falls under kaṇṭakaśodhana in Kauṭ.).

The enumeration of vyavahārapadas is very ancient and authoritative, but there is hardly any scientific principle of classification underlying them. A writer called Nibandhanakāra quoted in the Sarasvatīvilāsa[334] (p. 51) holds that in all the vyavahārapadas from *ṛṇādāna* to *dāyavibhāga* the relief claimed is something to be given or rendered (*deya*) by one party to the other, while in vākpāruṣya, daṇḍapāruṣya, sāhasa, gambling and betting the principal relief is in the form of daṇḍa (punishment). Here there is a glimmering of the distinction between civil and criminal litigation. Two deep-seated principles in the administration of law and justice everywhere are 'fulfil your promises' and 'cause injury (hiṁsā) to no one'. It is therefore that we find Bṛhaspati stating that lawsuits are of two kinds according as they originate in (demands about) wealth or in injuries. Yāj. II. 23 speaks of *arthavivāda* (civil dispute) and so made a distinction between civil and criminal disputes. Lawsuits[335] originating in wealth are divided into

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333. भिषजः ...... कर्मापराधेन विपत्तौ मध्यमः । मर्मवधवैगुण्यकरणे दण्डपारुष्यं विद्यात् । अर्थशास्त्र IV. 1; दुर्बलं वेश्म शकटमनुत्तब्धमूर्ध्वस्तम्भं शस्त्रमनपाश्रयमप्रतिच्छन्नं श्वभ्रं कूपं कूटावपातं वा कृत्वा हिंसायां दण्डपारुष्यं विद्यात् । अर्थशास्त्र IV. 13.

334. तथा च गौतमसूत्रम् । द्विरुत्थानतो द्विगतिरिति । व्यवहार इत्यनुषज्यते । तत्र निबन्धनकारेणोक्तम्–ऋणादानादिदायविभागान्तानां देयनिबन्धनत्वं साहसादिपञ्चकस्य दण्डनिबन्धनत्वमिति द्विरुत्थानतेत्यर्थ इति । स. वि. p. 51.

335. द्विपदो व्यवहारः स्याद्धनहिंसासमुद्भवः । द्विसप्तकोऽर्थमूलस्तु हिंसामूलश्चतुर्विधः ॥ ... एवमर्थसमुत्थानि पदानि तु चतुर्दश । पुनरेव प्रभिन्नानि क्रियाभेदादनेकधा । पारुष्ये द्वे साहसं च परस्त्रीसंग्रहस्तथा । हिंसोद्भवपदान्येवं चत्वार्याह बृहस्पतिः ॥ स्मृतिच० II. p. 9, व्य. मा. p. 277 (for first verse), परा. मा. III. pp. 20–21; साध्यं वादस्य मूलं स्याद्वादिना यन्निवेदितम् । देयाप्रदानं हिंसा चेत्युत्थानद्वयमुच्यते ॥ कात्यायन (30) quoted in स्मृतिच० II p. 13.

fourteen sorts and those originating in injuries are of four sorts These last are vākpāruṣya (defamation and abuse), daṇḍapāruṣya (assault and battery), sāhasa (murder and other forms of violence) and strīsaṅgraha (adultery). Here there is a clear distinction made between civil disputes (*arthamūla* or *dhanamūla*) and criminal ones (*hiṁsā-mūla*). Kāt. also says that disputes have their source in two viz. not rendering what should be given and injury (hiṁsā). Though in this way a distinction was made between civil and criminal disputes among the 18 titles of law, it appears that the set of rules and the procedure in both were the same (except as to the time allowed for reply, as to the qualifications of witnesses and as to proxies), the same courts tried both kinds of disputes and not as in modern times (when civil disputes are tried in one class of courts and criminal complaints in another and when the procedure also in both differs a great deal). There were not two sets of courts in ancient India as there were in England before the fusion of Law and Equity, but all courts in ancient and medieval India were required to administer the law of the texts tempered by common sense and reason as laid down by Bṛ.: 'a decision should not be given by merely relying on the text of the śāstra; when consideration of a matter is divorced from reason and common sense loss of dharma results' (q. by Aparārka p. 599).

Nār. (I. 8–29), Bṛ., Kāt., the Agnipurāṇa (253. 1–12 which reproduce almost *verbatim* the verses of Nār.) and others predicate several things about vyavahāra, such as that it is *dviphala* (has two results) and so on. All these are brought together here below for convenience. Vyavahāra is:—

Catuṣpād—having four feet, viz. dharma,[336] vyavahāra, caritra, rājaśāsana, acc. to Nār. (I. 10); while acc. to Yāj. II. 8

336. Among the verses at the end of IV. 1 of the Arthaśāstra the following two verses occur: धर्मश्च व्यवहारश्च चरित्रं राजशासनम्। विवादार्थश्चतुष्पादः पश्चिमः पूर्वबाधकः। तत्र सत्ये स्थितो धर्मो व्यवहारस्तु साक्षिषु। चरित्रं संग्रहे पुंसां राज्ञामाज्ञा तु शासनम् ॥. These two occur in Nār. (I. 10–11) and Hārita (q. in S. V. p. 58) with variations, viz. both read चतुष्पाद् व्यवहारोयमुत्तरः पूर्व॰ and चरित्रं पुस्तकरणे. Par. M. III. p. 10 reads चरित्रं तु स्वीकरणे. Lengthy explanations of these verses are offered in Aparārka (p. 597), Smṛticandrikā (II. pp. 10–11), Vyavahāraprakāśa (pp. 7, 88–89) and other digests. It has to be noted that the four (dharma &c.) mentioned in these verses are the means of arriving at a decision in a law-suit, as Bṛ. says: धर्मेण व्यवहारेण चरित्रेण नृपाज्ञया। चतुष्प्रकारोभिहितः सन्दिग्धेर्थे विनिर्णयः ॥ (in स्मृतिच॰ II. p. 10, परा. मा. III. p. 16, व्य. प्र. p. 6); व्यवहारोपि चरित्रेण बाध्यते यथा। साक्षिभिः साधितेप्याभीरस्त्रियाः पुरुषान्तरोपभोगे तद्दण्डे च व्यवहारतः प्राप्तेपि राजकुलाधिगतलिखिताद्विवर्तते। एवं हि तत्र लिखितम्–आभीरस्त्रीणां व्यभिचारेपि सति दण्डो न ग्राह्य इति। अपरार्क p. 597 (on या. II. 17.)

and Bṛ. they are the plaint, the reply, the proof (*kriyā*) and decision (*nirṇaya*) or acc. to Kāt. 31 (q. by Aparārka p. 616) plaint, reply, *pratyākalita*[337] and *kriyā.*

Dharma and the other three are really the four feet of nirṇaya (final decision), which is one of the four stages of a law-suit (vyavahāra) and so only in a secondary or far-fetched sense they are the four pādas of vyavahāra. Each of these four is said to be of two kinds. Vide Sm. C. II. pp. 10–11, Par. M. III. pp. 198–199, V. P. pp. 87–88 where the verses of Bṛ. are set out and fully explained. A decision is said to be arrived at according to dharma when the wrong-doer admits his guilt or wrong-doing and the real owner secures his wealth or the relief due to him without having to undergo the trouble of a protracted trial by means of witnesses, documents &c. Similarly a decision to be arrived at by ordeals is said to be one by dharma. Dharma and satya are often identified (vide note 125 above) and here the wrong-doer tells the truth and the decision is therefore said to be by *dharma.* When a litigation is fought out in Court by citing witnesses, the decision is said to be by vyavahāra. 'Witnesses' are mentioned only by way of illustration (and imply documents, possession and other means of proof). When a defendant is guilty of not giving a straight reply or when his reply is tainted with faults and so is unacceptable and a decision is given against him on that ground alone it is still a decision by vyavahāra. *Caritra* means 'the usages of a country, village or family' (*deśasthitiḥ pūrvakṛtā caritraṁ samudāhṛtam*—Vyāsa q. in Sm. C. II. p. 11 and Vy. Nir. p. 138). This seems to be the sense of 'caritra' in 'phalakavāre charitratoti' occurring in Nasik Inscription No. 12 in E. I. vol. VIII. p. 82. In prakīrṇaka 24 Nār. seems to give the same sense 'sthityartham pṛthivīpālais-caritraviṣayāḥ kṛtāḥ'. *Caritra* also means 'anumāna' (possession and presumptions). 'Anumānena nirṇītam caritramiti kathyate'–says Bṛ. quoted in Vy. Nirṇaya p. 139 and Par. M. III. p. 198. Usages are the means of decision in certain cases apart from the question whether they are supported by the smṛtis or

337. *Pratyākalita* means, acc. to Aparārka p. 616, the deliberation of the judge and sabhyas as to where the burden of proof (*onus probandi*) lies and as to the method of proof. Acc. to the Mit. on Yāj. II. 8, pratyākalita in this sense is not a vyavahārapāda, since it is not directly related to the litigants. Acc. to Nār. II. 21 pratyākalita seems to mean an addition to the plaint or to the reply (i. e. a supplementary written statement), वादिभ्यां लिखिताच्छेषं यत्पुनर्वादिना स्मृतम् । तत्प्रत्याकलितं नाम स्वपक्षे तस्य लिख्यते ॥.

not. 'Caritram pustakaraṇe' means that such usages are valid means of decision if they have been written down or recorded by the king, while 'caritram tu svīkaraṇe' (the reading in Par. M.) means 'usages become the rule of decision when they are accepted as valid by the people and by the courts'. When a king issues in a matter of dispute an order which is not opposed to smṛtis or local usages and which is thought out as the most appropriate one by the king's intellect or which is issued to decide a matter when the authorities on each of two sides are equally strong, it is a decision by royal command. Bṛ. (in Par. M. III. p. 148) and Kāt. (verses 35-38 q. in Sm. C. II. p. 10, Par. M. III. pp. 16-17, V. P. p. 7) explain the above four. Bṛhaspati gives two meanings of caritra: (1) what is decided by inference; (2) the usages of a country. When it is said that each later one of the four stultifies each preceding one, the idea is not that in all cases it is so, but that it is so only in some cases. Vide Kāt. (43 q. by V. P. p. 90) which makes this clear. Some examples may be given. If one litigant says that he would prove his case by an ordeal, while the other says that he will prove his contention by human means (documents or witnesses &c.), then the trial by ordeal is not to be resorted to but the hearing of the case is to proceed in the ordinary way. Vide Kāt. 218 (q. by Mit. on Yāj. II. 22) for this rule. Here dharma is set aside in favour of vyavahāra. Another example is given in the Par. M. III. p. 18. A person belonging to one of the four varṇas commits a seditious act (*rājadroha*) and through timidity admits his guilt (this is *satya*), but the witnesses (relying on Manu X. 130 that where the punishment would be death, a witness may tell a lie) deny that he was guilty of the act and he is let off. Here dharma is set aside in favour of vyavahāra (trial based on the depositions of witnesses). Vide Sm. C. (II. p. 11) for another similar example. In the country of Kerala visiting a prostitute was not condemned by custom. So even though it is established by witnesses that a person in Kerala did so, the local king may not punish him with a fine. Or suppose a person is charged with the offence of adultery with the wife of an *ābhīra* and this fact is established by witnesses. Yet the man charged may show that among the ābhīras there is a usage (written down in the census records of the king) that adultery with an ābhīra woman is not punishable. In such cases caritra (usage) annuls the (ordinary) vyavahāra. But suppose that in such cases the king, in order to improve the morals of a section of his subjects, issues a

proclamation that from the date of the proclamation one who is guilty of adultery with an ābhīra woman will be punished, then in that case usage will be set aside by royal command, which will then be the rule of decision. Similarly where there are no witnesses nor documents nor possession and no room for ordeal and there are no texts and local usages it is the king who has to decide as best as he can. Vide Pitāmaha q. in Sm. C. (II. p. 28). Kāt. (verses 39–43 q. in V. P. p. 89) describes how and when each later one sets aside each prior one.

Catuṣsthāna—having four bases viz. satya, witnesses, pustakaraṇa and rājaśāsana.

Catuḥsādhana—having four means viz. *sāma*, *dāna*, *bheda* and *daṇḍa*.

Caturhita—benefitting the four (the four varṇas and four āśramas).

Caturvyāpin—that envelopes or reaches four viz. the disputants, witnesses, the sabhyas and the king.

Catuṣkārin—that brings about four results viz. dharma (justice), gain, renown, love or regard of the people.

Aṣṭāṅga—it has eight limbs or members viz., the king, his good officer (chief judge), sabhyas (*puisne* judges), śāstra (law books), accountant, scribe, gold, fire and water.

Aṣṭādaśapada—has eighteen titles (viz. ṛṇādāna and others enumerated above).

Śataśākha—having a hundred branches. This is approximate. Nār. (I. 20–25) states that the 18 titles have 132 sub-heads (ṛṇādāna 25, upanidhi 6, sambhūyasamutthāna 3, dattāpradānika 4, aśuśrūṣā 9, vetana 4, asvāmivikraya 2, vikrīyādāna 1, krītānuśaya 4, samayasyānapākarma 1, kṣetravāda 12, strīpuṁsayoga 20, dāyabhāga 19, sāhasa 12, vākpāruṣya and daṇḍapāruṣya 3, dyūtasamāhvaya 1, prakīrṇaka 6).

Triyoni—having three springs or motives viz. kāma (sexual desire), krodha (hot temper), lobha (greed).

Dvyabhiyoga—founded on two kinds of complaint viz. on suspicion or on fact. Nār. I. 27 says that a complaint on suspicion may be made against those who associate with men of evil repute (such as thieves, gamblers and dissolute persons) or it may be made on the ground that a certain person is really

the thief because the thing stolen is found with him (this is *tattvābhiyoga*). This latter may take two forms i. e. the grievance of the plaintiff may be negative (e. g. the defendant took or borrowed a debt or article and does not return it) or positive (e. g. the defendant has dispossessed the plaintiff of land).[338] Vide Mit. on Yāj. II. 5.

Dvidvāra—having two openings i. e. it is based on the statements in the plaint and those in the reply.

Dvigati—having two issues, that is, the decision may be founded on truth or on error.

Dvipada—having two aspects, viz. relating to wealth and so civil (dhanamūla), and relating to injury and so criminal (hiṁsāmūla). This is acc. to Kāt. 29.

Dvirutthāna—having two springs or sources. It is the same as above. Hārīta and Kāt. 30 mention this.

Dviskandha—having two trunks viz. dharmaśāstra and arthaśāstra (acc. to Kāt. 32).

Dviphala—having two results, victory or failure (Kāt. 32).

Ekamūla—Hārīta and Kāt. mention this. It means 'having only one (viz. what is to be established) as its root'.

Sapaṇa and *apaṇa*—where both parties to the litigation or one of the parties stakes (either through pride or anger or belief in the truth of his case) a certain sum of money to be paid by him in case of his defeat, that is called *sapaṇa* law-suit (Yāj. II. 18); in this case the defeated party will pay to the king the usual fine for a defeated party and also the sum staked by him and will deliver to the successful party what is due to him. Vide also Viṣṇudharmottara III. 324. 44. A lawsuit may also be *apaṇa* (without a stake being declared). Nār. (I. 4) employs the words *sottara* and *anuttara* for these two.

The Sm. C. (II. pp. 27–28), Par. M. (III. pp. 42–45), Sarasvatīvilāsa pp. 73–74, V. P. pp. 36–38, state that, according to Pitāmaha, the king may take cognizance of his own motion without

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338. न्यायं मे नेच्छते कर्तुमन्यायं वा करोति च । न लेखयति यस्त्वेवं तस्य पक्षो न सिध्यति ॥ कात्या. q. by विश्वरूप (on या. II. 6), स्मृतिच॰ II. p. 39, मिता. on या. II. 5. 'न्यायागतं मदीयं धनं गृहीत्वा न ददातीतिवत् प्रतिषेधरूपेण वा मदीयं क्षेत्रादिकमपहरतीति वा विधिरूपेण वा यो न लेखयतीत्यर्थः ।' स्मृतिच॰ II. p. 39.

the complaints of private persons of certain matters called *aparādhas*, *padas* and *chalas* and these works set out the lists of ten *aparādhas*, 22 *padas* and 50 *chalas*[339]. The king may himself come to know about these or these matters may be brought to his notice by an officer called sūcaka or a private man called *stobhaka*, defined acc. to Kāt. (33–34) as follows:—[340] that man is declared to be *sūcaka* who is appointed by the king himself for finding out the wrong-doings of people and who on coming to know of them conveys them to the king; that man is a *stobhaka* who with a sole eye to money and without being urged by the king informs the king first of actions (among the people) that are condemned by the śāstras.' Therefore a stobhaka is a private informant for money. The ten aparādhas, acc. to Nār, are: disobedience of the king's order, murder of a woman, confusion of varṇas, adultery, theft, pregnancy from one not the husband, abuse and defamation, obscenity, assault (daṇḍapāruṣya), abortion[341]. They were called aparādhas because they were met with fine. It will be noticed that some of these come under several vyavahārapadas and some like 'varṇasaṅkara' are included in prakīrṇaka by Nārada (v. 4). The king could by his own action investigate these even if no private complaint be lodged. Saṁvarta (quoted by the Sm. C. II. p. 28, Par. M. III. pp. 44–45) gives another list which differs in some respects from the above. In the Nālandā copperplate of Devapāladeva (E. I. vol. XVII p. 310, p. 321) an officer called 'daśāparādhika' is mentioned. In many grants from the 7th century onwards among the taxes remitted to the donees we often meet the expression 'together with the ten aparādhas' (sadaśāparādhaḥ', in Valabhi grant of Dhruvasena III dated saṁvat 334 i. e. 653–4 A.D., E. I. vol. I p. 85, at p. 88, E. I. XVII p. 310 at p. 321, in Gupta Ins. No. 39 p. 179 of 766–767 A. D.), or 'daśāparādhādisamastotpattisahito dattaḥ' (in E. I. vol. VII p. 26, p. 40 of śake 852), or

339. छलानि चापराधांश्च पदानि नृपतेस्तथा । स्वयमेतानि गृह्णीयान्नृपस्त्वावेदकैर्विना ॥ पितामह q. in स्मृतिच II. p. 27, परा. मा. III. p. 42.

340. शास्त्रेण निन्दितं त्वर्थं मुख्यो राज्ञाप्रचोदितः । आवेदयति यः पूर्वं स्तोभकः स उदाहृतः ॥ नृपेणैव नियुक्तो यः परदोषमवेक्षितुम् । नृपस्य सूचयेज्ज्ञात्वा सूचकः स उदाहृतः ॥ कात्यायन q. in स्मृतिच॰ III. p. 28 (reads मुख्यश्चार्थप्रचोदितः), परा॰ मा. III. p. 45 (reads त्वर्थं मुख्यश्चार्थं and नृपस्य समयं ज्ञात्वा), व्य. प्र. p. 38 (reads परदोषानवेक्षणे).

341. आज्ञालङ्घनकर्तारः स्त्रीवधो वर्णसङ्करः । परस्त्रीगमनं चौर्यं गर्भश्चैव पतिं विना ॥ वाक्पारुष्यमवाच्यं च दण्डपारुष्यमेव च । गर्भस्य पातनं चैवेत्यपराधा दशैव तु ॥ नारद q. in स्मृतिच. II. p. 28, परा. मा. III. p. 44, स. वि. p. 73, दण्डनीतिप्रकरण of केशव p. 12.

'sadaṇḍadaśāparādhaḥ' (E. I. vol. III p. 53 at p. 56, Torkhede plate of Govinda in śake 735, and E. I. vol. III p. 263, 266, the Rajor inscription of Mathanadeva dated Vikrama saṁvat 1016). It is not correct to hold that the words refer to the right of the donee to be exempt from guilt arising from the commission of some traditional offences or that authority was conferred by the grant on the donee to deal with offenders committing the ten aparādhas and to recover the fines imposed by themselves (as suggested in J B O R S for 1916 p. 53n). No king would ever think of exempting donees in pious gifts or the villages in those grants from the results of such grave aparādhas as the murder of a woman, adultery, theft and abortion, nor is it possible to hold that a king authorised a private individual or individuals to exercise judicial power in such crimes as murder when (as we shall see later on) the power of dealing with *sāhasa* was not conferred on śreṇi or gaṇa tribunals. The real meaning appears to be that the fines levied by him for the commission of the aparādhas in the villages granted would be made over to the donees as part of the gift, when recovered by the king. The 22 *padas* were called *padas* of the king to distinguish them from the vyavahārapadas. According to Pitāmaha[342] they are: ripping open an animal's body (with a sharp weapon), destruction of growing crops, incendiarism, rape of a maiden, concealment of treasure trove, making a breach in an embankment or thorny hedge, grazing cattle over the field of another, destruction of a public garden, poisoning, high treason, unauthorised breaking of the royal seal, divulging the secret line of policy of the king, releasing from jail a prisoner, appropriation of the taxes or fines to be levied by the king (these are two), appropriating gifts (made by the king) or the *utseka*

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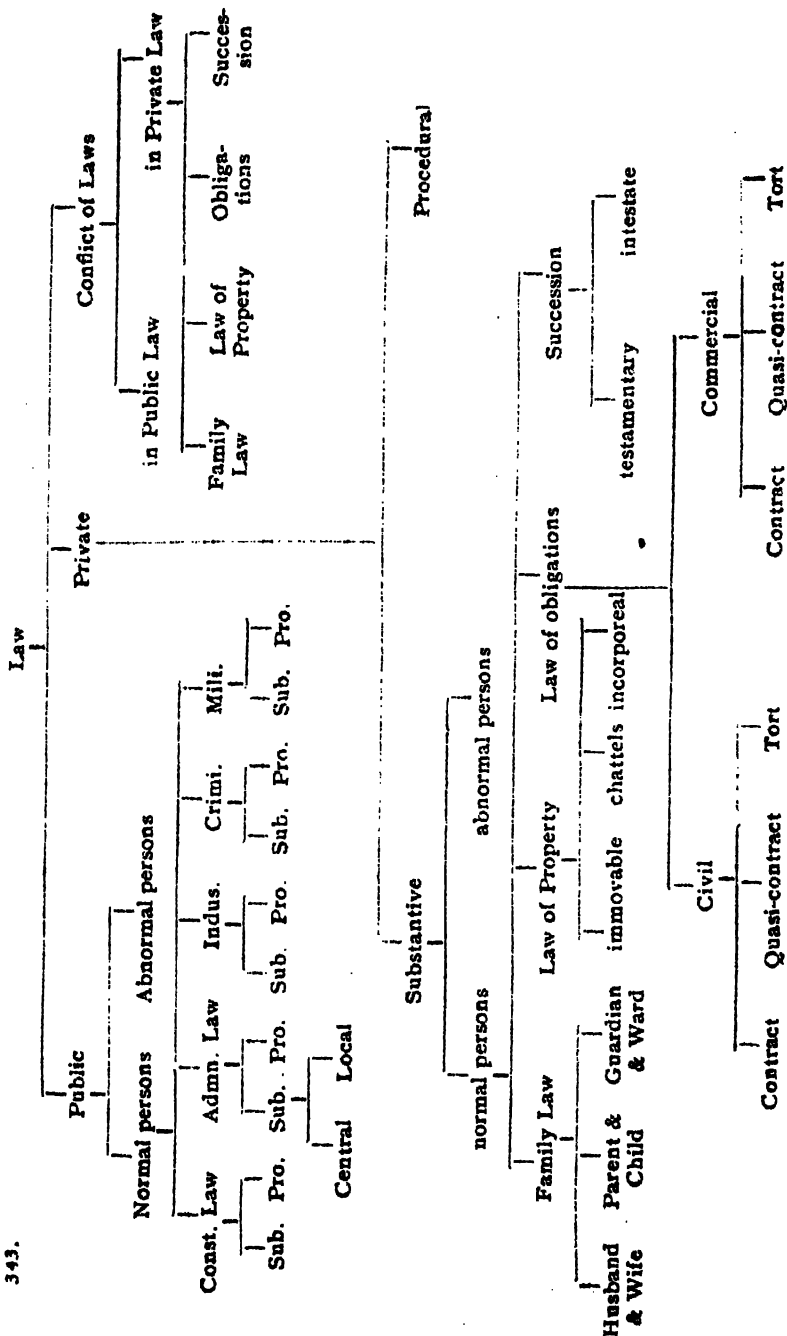
342. उत्कर्ती सस्यघाती चाप्यग्निदश्च तथैव च। विध्वंसकः कुमार्याश्च निधानस्योपगोपकः ॥ सेतुकण्टकभेत्ता च क्षेत्रसञ्चारकस्तथा। आरामच्छेदकश्चैव गरदश्च तथैव च ॥ राज्ञो द्रोहप्रकर्ता च तन्मुद्राभेदकस्तथा। तन्मन्त्रस्य प्रभेत्ता च बद्धस्यैव च मोचकः ॥ भोगदण्डौ च गृह्णाति दानमुत्सेकमेव (? मुत्सर्गमेव) च। पटहाघोषणाच्छादी द्रव्यमस्वामिकं च यत् ॥ राजावलीढं द्रव्यं यच्चैवाङ्गविनाशनम्। द्वाविंशतिं पदान्याहुर्नृपज्ञेयानि पण्डिताः ॥ स्मृतिच. II. p. 28, परा. मा. III. p. 45, स. वि. p. 73, व्य. प्र. p. 37. The passage is somewhat corrupt; स. वि. gives a summary in prose and begins with विकृन्तति, while the rest read उत्कर्ती or उत्कृत्ती. व्य. प्र. and दण्डनीतिप्रकरण p. 12 reads दानं विक्रयमेव च (which would mean 'appropriating a gift or property sold by the king').

(? *utsarga*, dedication to the public), preventing the proclamation (of royal orders) by beat of drum from being heard, receiving property from a person who is not the owner, receiving articles that are enjoyed by the king (without his permission), causing destruction (or loss) of any one of the (seven) elements (of the State). The fifty *chalas* were mostly breaches of etiquette before the eyes or in the presence of the king. According to Pitāmaha they are: obstructing the road, raising the hand threateningly, leaping over a fort-wall (without permission or reason), destroying a cistern, destroying a temple, filling up a ditch (dug round a fort), divulging the weak points of the king (to the enemy), unauthorized entrance into the harem or royal chamber or the treasury or the royal kitchen (these are four), prying when the king is taking his meals, voiding ordure or urinating or blowing the nose or passing wind in the presence of the king (these are four), to sit before the king on haunches (*paryaṅkāsana*), to occupy the foremost seat in the king's presence, to enter royal presence in a dress more resplendent than the king's or supported by another or by the wrong-doer or at an improper time (these are four), to lie down on the bed or seat of the king or to put on his shoes (these are three), to go near the king (uncalled) when the latter is lying down on his bed, to serve the king's enemies, to occupy a seat that is not offered, to use gold in the dress or ornaments (these are two), to take tāmbūla (from the king's betel box) and chewing it (this is one), to speak loudly without being asked (by the king), to run down the king, to wear only one garment, to appear before the king with oil on the hair, to untie the hair (before him), to cover one's face, to have a body painted with figures, to wear a garland, to shake one's garment, to cover the head, to be bent on finding the weak points of the king, to be thick with evil men (or to touch the king), to have dishevelled hair, pointing out the nose, the ears and the eyes (these are three), to pick the teeth, to cleanse the ear or the nose (these are two). As the list of *chalas* is a very long one the verses are not quoted below, but are given in the Appendix (note 342 a). Śukra (IV. 5. 73-88) quotes all the verses from Nārada and Pitāmaha on the *aparādhas*, *padas* and *chalas* and in III. 6 also gives a list of ten sins, which is different from that of the aparādhas.

In modern works on Jurisprudence various classifications of Law are stated. For example, Dr. E. Jenks in 'New Jurisprudence' (1933) furnishes at the end of his work a very

elaborate classification which is set out in the note below.[343] Ancient systems cannot be expected to present such a classification. Ancient Hindu smṛtis were content, as shown above, to

343.

divide the vyavahārapadas into civil and criminal. They more or less deal with most of the subjects brought out in modern classifications but not in an orderly manner. They also divide laws into substantive and adjective or procedural. The vyavahārapadas correspond to the former and the rules about procedure, the appointment of Judges and the constitution of courts, evidence and limitation are adjective law. Some of these are dealt with in the commentaries and digests under a section called *vyavahāramātṛkā* (the elements of judicial procedure) and the rules of evidence are stated in Yāj., Nār. and others under the vyavahārapada ṛṇādāna once alone. It would be more convenient to deal with adjective law first. That law is now of antiquarian or academic interest only and will therefore be treated somewhat briefly. The smṛtis lay down a high level of judicial procedure, but the procedure must have been modified to suit the requirements of different times and the resources and inclinations of different kings. Some of the vyavahārapadas viz. *ṛṇādāna* (recovery of debt), *strīpuṁsayoga* and *dāyabhāga* (partition of heritage) are of great practical importance even now, as all Hindus are governed in matters of partition, inheritance, debts, marriage and sonship by the rules of Hindu Law gathered from the Smṛtis and digests as modified by legislative enactments and judicial decisions. For description of Judicial administration in the Buddhist texts and times, vide Fick pp. 107, 111-112 (which show that the administration of justice in Vesāli, the capital of the Licchavis, was a complicated affair, one of the courts being that of the *aṭṭhakulakas* i. e. of eight heads of families), Jayaswal's 'Hindu Polity', part II pp. 156-157, Hiouen Thsang's account in Beal's B.R. W. W. Vol. I. pp. 84-85 ; and Bombay Gazetteer, Vol. 24 pp. 266-267 (for the administration of Justice under the Marathas).

Justice was to be primarily dispensed by the king. He was an original court as well as an appellate tribunal. Smṛtis and digests insist that the king cannot dispense justice by himself alone, but must do so with the help and guidance of others. Manu VIII. 1-2 and Yāj. II. 1 provide that the king wearing no gaudy dress or ornaments is to enter the sabhā (the Hall of Justice) for looking into the causes of litigants, accompanied by learned brāhmaṇas and ministers proficient in statecraft, is to be free from hot temper and greed and decide according to the law laid down in dharmaśāstras. Kāt. (55-56 quoted in V. M. p. 278, Mit. on Yāj. II. 2) says the same thing and adds that

a king who examines disputes in the presence of the Judge, the ministers, learned brāhmaṇas, the purohita and the sabhyas attains heaven. Vide Śukra IV. 5. 5 to the same effect (taking half verses from Yāj. and Kāt.). The king was not to decide by himself but was to follow the advice of his judge, though the responsibility even when he took advice was the king's. Vide Śukra IV. 5.6 (*naikaḥ paśyecca kāryāṇi*). Nār. I. 35 says that the king has to abide by the view of the judge (*prāḍvivāka-mate sthitaḥ*). This sentiment that it is not safe for a single man, however clever he may be, to undertake to decide a dispute was so ingrained among all people that Kālidāsa gives expression to it in the Mālavikāgnimitra (Act I) when he pens the sentence 'sarvajñasyāpyekākino nirṇayābhyupagamo doṣāya'. In Raghuvaṁśa 17.39, Kālidāsa states that king Atithi always looked into the causes of people himself with the help of judges (*dharmastha*)[344]. Pitāmaha[345] states that a person even if he knows the rules (of dharma) should not give a decision single-handed. Justice was to be dispensed openly in the court and not secretly. Śukra (IV. 5. 6-7) states[346] that neither the king nor the judge nor the sabhyas were to hear a cause in secret and that there were five reasons that led to the charge of partiality in judges viz. hot temper, greed, threats, enmity and hearing disputes in private. Judicial action is divisible into two provinces, viz. that of law and that of fact. The latter is a field in which it is impossible to lay down rules for determination. On points of facts there was a vast scope for the king's or judge's discretion. And therefore the texts contented themselves by saying that the king or judge should keep an open or impartial mind, should be free from hot temper or greed, should hear causes under the glare of public view and should not decide at his own will alone but with the help of learned brāhmaṇas and sabhyas. As regards points of law the king or judge is

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344. स धर्मस्थसखः शश्वदर्थिप्रत्यर्थिनां स्वयम् । ददर्श संशयच्छेद्यान्व्यवहारान-तन्द्रितः ॥ रघुवंश । 17. 39. The word धर्मस्थ used here for judges may be noted. Kauṭ. uses the same word in III. 1. From a detailed examination of the Raghuvaṁśa it appears very probable that Kālidāsa had closely studied Kauṭilya's Arthaśāstra.

345. तस्मान्न वाच्यमेकेन विधिज्ञेनापि धर्मतः । इति पितामहेन एकस्य धर्मकथननिषे-धात् । स. वि. p. 67.

346. नैकः पश्येच्च कार्याणि वादिनोः शृणुयाद्वचः । रहसि च नृपः प्राज्ञः सभ्याश्चैव कदाचन ॥ पक्षपाताधिरोपस्य कारणानि च पञ्च वै । रागलोभभयद्वेषा वादिनोश्च रहःश्रुतिः ॥ शुक्र. IV. 5. 6-7.

required to decide according to the rules of dharmaśāstra (Manu VIII. 3., Yāj. II. 1, Nār. I. 37, Śukra IV. 5. 11) and where there are no texts the king should decide in accordance with the recognized custom of the country. Kāt. solemnly warns[347] the king against legislating or deciding according to his own will in the face of the texts: 'If a king decides (a case) by his own *fiat* where there is a text (of the śāstra applicable to it) it leads him away from heaven, it causes ruin to the people, it brings danger (to the king) from the armies of his foes and it strikes down the roots of (long) life; therefore a king should decide the causes of people according to the rules of śāstra; but in the absence of smṛti texts he should carry out (judicial administration) according to the usages (lit. the views) of the country'. These are the same as Śukra (V. 5. 10–11). Kāt. further prescribes that the usages established in a country by the approval of its people and that are not in direct conflict with Veda and Smṛtis should be recorded in writing under the seal of the king. Pitāmaha[348] quoted by the Sm. C. (II. p. 26) states that in certain cases it is the king's own mind that is the deciding factor.

How the king directly dispensed justice is illustrated by the rules of Gaut. XII. 40–42 and Manu VIII. 314–316 that a thief who has stolen a brāhmaṇa's gold may run with dishevelled hair to the king carrying an iron club or a heavy bludgeon of khadira wood, may declare the sin committed by him and request the king to award punishment, that the king may then strike him with the club and that whether the thief dies or lives after the king so strikes him he becomes free from the guilt. The king was also the highest court of appeal. The Rājataraṅgiṇī (VI. 14–41) states how king Yaśaskara heard the appeal of a person who had sold his house without the well, who on returning

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347. अस्वर्ग्या लोकनाशाय परानीकभयावहा। आयुर्बीजहरी राज्ञां सति वाक्ये स्वयंकृतिः॥ तस्माच्छास्त्रानुसारेण राजा कार्याणि कारयेत्। वाक्याभावे तु सर्वेषां देशदृष्टेन तन्नयेत्॥ कात्या. q. by अपरार्क p. 599, स्मृतिच. II. pp. 25–26, परा. मा. III. p. 41. शुक्र. IV. 5. 10–11 are the same as कात्या. यस्य देशस्य यो धर्मः प्रवृत्तः सार्वकालिकः। श्रुतिस्मृत्यविरोधेन देशदृष्टः स उच्यते॥ देशस्यानुमतेनैव व्यवस्था या निरूपिता। लिखिता तु सदा धार्या मुद्रिता राजमुद्रया॥ कात्या. q. in स्मृतिच. II. p. 26, परा. मा. III. p. 41. Vide मनु. 8. 3 for देशदृष्ट.

348. यत्र पूर्वे हेतवो न विद्यन्ते तत्र पार्थिववचनान्निर्णय इत्याह स एव (पितामह एव)। लेख्यं यत्र न विद्येत न भुक्तिर्न च साक्षिणः। न च दिव्यावतारोऽस्ति प्रमाणं तत्र पार्थिवः। निश्चेतुं ये न शक्याः स्युर्वादाः सन्दिग्धरूपिणः। तेषां नृपः प्रमाणं स्यात् स सर्वस्य प्रभुर्यतः॥ स्मृतिच. II, p. 26.

from a long absence abroad found the well usurped by the vendee and was defeated in the lower courts because the vendee had bribed the scribe to write '*kūpasahita*' instead of '*kūparahita*' and how the king decided in the man's favour by exposing the vendee with a trick: while in VI. 42–69 the same king is said to have reversed another decision about a contract by a man whose 100 coins had fallen into a well. The same work in another place (IV. 82–108) states how a brāhmaṇa wife appealed to the king of Kashmir to find out the culprit who had murdered her husband in his sleep and how the king by superhuman means held a sorcerer to be the murderer.

When owing to pressure of other weighty business the king cannot attend to the work of administering justice, the king should appoint a learned brāhmaṇa together with three sabhyas to decide the disputes of people. Vide Manu VIII. 9–10, Yāj. II. 3, Kāt. 63[349] (same as Śukra IV. 5. 12). The qualifications of a judge are set out in many places. Āp.[350] Dh. S. II. 11. 29. 5 prescribes that in law-suits judges shall be endowed with learning, good family, and should be old, clever, and careful about dharma. Nār. requires: 'The Judge should be proficient in the texts on the eighteen titles of law, their 8000 sub-heads, in logic (ānvīkṣikī) and should be master of the Veda and Smṛtis. Just as a physician takes out from the body an iron dart by the employment of surgical instruments, so a judge should extricate from a law-suit the deceit (underlying it)'.[351] Kāt. says that a judge should be restrained, born of a good family, impartial, not repellent (or harsh in his manners), steady, afraid of the next world, highly religious, assiduous and free from hot temper. A fine enumeration of the qualities required in a judge is given in the ancient drama Mṛcchakaṭika (IX. 4). Vide Mānasollāsa

349. यदा न कुर्यान्नृपतिः स्वयं कार्यविनिर्णयम्। तदा तत्र नियुञ्जीत ब्राह्मणं शास्त्रपारगम्॥ दान्तं कुलीनं मध्यस्थमनुद्वेगकरं स्थिरम्। परत्र भीरुं धर्मिष्ठमुद्युक्तं क्रोधवर्जितम्॥ कात्या. quoted in व्य. मा. p. 279, स्मृतिच॰ II. p. 16, राज. र. p. 18 (first verse), मिता॰ on या. II. 3 (2nd verse), व्यवहारतत्त्व p. 196, शुक्र IV. 5. 12–13. Some read दक्षं कुलीनम्.

350. विवादे विद्याभिजनसम्पन्ना वृद्धा मेधाविनो धर्मेष्वविनिपातिनः। आप. ध. II. 11. 29. 5.

351. अष्टादशपदाभिज्ञस्तद्भेदाष्टसहस्रवित्। आन्वीक्षिक्यादिकुशलः श्रुतिस्मृतिपरायणः॥ यथा शल्यं भिषक्कायादुद्धरेद्यन्त्रयुक्तिभिः। प्राड्विवाकस्तथा शल्यमुद्धरेद्व्यवहारतः॥ नारद q. in स्मृतिच॰ II. p. 14. The 2nd is नारद (III. 16). It is quoted as हारीत's in राज. र. p. 19.

II. 2 verses 93–94. A Judge was generally styled *prāḍvivāka* or sometimes *dharmādhyakṣa* (as in Rāj. R. p. 18),[352] or *dharma-pravaktṛ* (Manu VIII. 20) or *dharmādhikārin* (as in Mānasollāsa II. 2. verse 93). Prāḍvivāka is an ancient word. It occurs in Gaut. XIII. 26, 27 and 31, Nār.[353] (I. 35), Bṛhaspati (q. by Aparārka p. 602). The word is a combination of '*prāḍ*' (one who puts questions to the suitors, from the root 'pracch') and '*vivāka*' (who speaks out or analyses the truth, from the root 'vac' with 'vi'). The derivation is given by Nār., Bṛhaspati, Kāt. 68 and others. The word 'praśnavivāka' (which is quite close to prāḍvivāka in sense and etymology) goes very far into antiquity and occurs in Vāj. S. XXX. 10 and Tai. Br. III. 5. 6. The existence of the word prāḍvivāka as early as Gautama (about 500 B. C.) and of prāśnavivāka in the Vāj. S. and Tai. Br. clearly establishes that in ancient India judicial functions became separated very early from executive or political functions.

The chief Judge was preferably to be a learned brāhmaṇa (Manu VIII. 9, Yāj. II. 3). Kāt. (67)[354] and Śukra IV. 5. 14 prescribe that, if a learned brāhmaṇa cannot be had for the post of the chief judge, then a kṣatriya or a vaiśya who knows the

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352. स्मृतिः । कुलशीलगुणोपेतः सत्यधर्मपरायणः । प्रवीणः पेशलो दक्षो धर्माध्यक्षो विधीयते । राज. र. p. 18.

353. विवादसंश्रितं धर्मं पृच्छति प्रकृतं मतम् । विवेचयति यस्तस्मात्प्राड्विवाकस्ततः स्मृतः ॥ नारद q. in स्मृतिच० II. p. 14; व्यवहाराश्रितं प्रश्नं पृच्छति प्राडिति स्थितिः । विवेचयति यस्तस्मिन् प्राड्विवाकस्ततः स्मृतः ॥ कात्या. in व्य. मा. p. 274. अपरार्क p. 602 quotes this as from बृहस्पति. The मिता० on या. II. 3 derives 'अर्थिप्रत्यर्थिनौ पृच्छतीति प्राट् तयोर्वचनं विरुद्धमविरुद्धं च सभ्यैः सह विविनक्ति विवेचयति वेति विवाकः । प्राट् चासौ विवाकश्च प्राड्विवाकः'. पूर्वोत्तरपक्षौ पृच्छतीति प्राट् निर्णयं विशेषेण प्रवक्तीति विवाक इति यौगिकी तस्य संज्ञा । प्राड्विवाक इति पृषोदरादित्वात्साधुः । स. वि. p. 64. Vide अपरार्क p. 602 and राज. र. p. 18 for another verse of बृहस्पति 'विवादे पृच्छति' and मिता. on या. II. 3. and राज. र. p. 19 for a verse of व्यास on the derivation of प्राड्विवाक. Vide शुक्र IV. 5. 66 for the derivation of विवाक from the root विच् or वच्. मर्यादायै प्रश्नविवाकम् । वाज. सं. XXX. 10.

354. ब्राह्मणो यत्र न स्यात्तु क्षत्रियं तत्र योजयेत् । वैश्यं वा धर्मशास्त्रज्ञं शूद्रं यत्नेन वर्जयेत् ॥ कात्या. q. by मिता० (on या. II. 3), अपरार्क p. 601, व्य. मा. 279, राज. र. p. 23, स्मृतिच० II. p. 17. The स्मृतिच० II. p. 17 cites another verse where the first quarter is यत्र विप्रो न विद्वान् स्यात् and the other three are the same as above. शुक्र IV. 5. 14 (यदा विप्रो न विद्वान्) is the same as this. वेदव्यास IV. 44 defines ब्राह्मणब्रुव (which occurs in मनु VIII. 20) 'गर्भाधानादिभिर्मन्त्रैर्वेदोपनयनेन च । नाध्यापयति नाधीते स भवेद् ब्राह्मणब्रुवः ॥'. कुल्लूक on मनु. VII. 85 explains 'यो ब्राह्मणः क्रियारहित आत्मानं ब्राह्मणं ब्रवीति स ब्राह्मणब्रुवः'.

dharmaśāstras may be appointed, but the king should carefully avoid appointing a śūdra as a judge. Manu VIII. 20 says that the king may prefer a brāhmaṇa who is not learned and maintains himself by the mere fact of his caste, but should never have a śūdra as the expounder of dharma and that the country whose king has a śūdra as judge to expound dharma comes to ruin as a cow sinks in mud. Vyāsa (q. in S. V. p. 65) is to the same effect. Manu (VIII. 10-11), Yāj. (II. 3), Nār. (III. 4) and Śukra IV. 5. 17 state that the king should appoint at least three sabhyas (*puisne* judges or members of the court of justice) to associate with the Chief Judge in the disposal of suits (the idea being that three are the least number of sabhyas to be appointed). Kauṭ. (III. 1) prescribes that the courts called '*dharmasthīya*' should be manned by three judges called *dharmasthas* who should possess the qualifications and status of amātyas and that such courts should be established on the borders of the provinces, for a group of ten villages (*saṅgrahaṇa*), for a district (*droṇamukha*, 400 villages) and provinces (*sthānīya*, 800 villages). Bṛhaspati says[355] that the sabhyas may be seven, five or three. As in the case of the chief judge, the sabhyas should be preferably brāhmaṇas, but they may be kṣatriyas or vaiśyas. Manu (VIII. 11) and Bṛ. say that when in a sabhā three brāhmaṇas learned in the Vedas sit along with the chief judge appointed by the king that is like the *sabhā* of Brahmā or it is like a sacrifice. Yāj. II. 2, Viṣṇudharmasūtra III. 74, Kāt. 57, Nār. III. 4-5, Śukra IV. 5. 16-17 and others require the following qualifications in the sabhyas : they should be endowed with the study of the Vedas, should know dharmaśāstra, should speak the truth, should be impartial to friend or foe, should be steady, devoted to their work, intelligent, hereditary, proficient[356] in arthaśāstra. Impartiality in the king and the judges is insisted on in the texts. Vide Vas. 16. 3-5, Nār. (I. 34, III. 5). The king was not to appoint as sabhyas those who were ignorant of the usages of the country, who were atheists and devoid of the study of śāstras, who were either puffed up, hot-tempered, greedy or distressed (Bṛ. q. in Sm. C.

355. लोकवेदाङ्गधर्मज्ञाः सप्त पञ्च त्रयोपि वा । यत्रोपविष्टा विप्राः स्युः सा यज्ञसदृशी सभा ॥ बृहस्पति quoted in स्मृतिच० II. p. 15. It is also शुक्र० IV. 5. 26.

356. स तु सभ्यैः स्थिरैर्युक्तः प्राज्ञैर्मौलैर्द्विजोत्तमैः । धर्मशास्त्रार्थकुशलैरर्थशास्त्रविशारदैः ॥ कात्या. q. by मिता० (on या. II. 2), व्य. मा. p. 278, स्मृतिच० II. p. 15; अलुब्धा धनवन्तश्च धर्मज्ञाः सत्यवादिनः । सर्वशास्त्रप्रवीणाश्च सभ्याः कार्या द्विजोत्तमाः ॥ कात्या. q. by अपरार्क p. 601, राज. र. p. 23. Vide शान्ति 83.2 for सभ्यगुणस.

II. p. 15). The chief justice (prāḍvivāka) with the sabhyas constituted the Court, being appointed (*niyukta*) by the king. It was stated above that the king was to enter the Hall of Justice with the chief justice, sabhyas and brāhmaṇas. The distinction is that sabhyas were appointed by the king as judges, while brāhmaṇas were persons who were well-versed in dharmaśāstra, who could attend the Court, though not appointed (*aniyukta*) and whose opinions on difficult points of law were respectfully received by the judges. They (the learned brāhmaṇas) were in the position of *amicus curiæ*. All and sundry were not to intermeddle in trials before the court, but only those who were learned in dharmaśāstra were allowed to express their opinions on knotty points. Vide[357] Mit. on Yāj. II. 2. Manu VIII. 12–14 (same as Nār. III. 8–10 in a different order) say that either a person should not enter a *sabhā* or if he enters should say what is proper, that a man remaining silent or declaring what is false becomes a sinner and that, where in spite of the opinion of some or all sabhyas, justice is not done by the king, they become participators in the king's guilt. Kāt. (74–78) makes it the duty of the sabhyas to bring round a king gradually to the right path when the king is about to start on the path of injustice and to state the true decision.[358] In the case of the brāhmaṇas their duty ends with stating the rule according to the śāstras; they have not, like the sabhyas, to prevent the king from doing the wrong thing or to bring him round to the path of right and justice. Nār. (III. 1) states elsewhere that one who is not appointed by the king should not interfere by his speech in the decision of a case and that if he does so he would be fined. This applies to the people that are present in the court to see the trial or that accompany the litigants. It has no application to learned brāhmaṇas, who though not appointed by the king, can state their view of the law.[359] Vide Vyavahārasāra pp. 16–17. Nār. III. 17 requires that all the judges of the Court should give a unanimous decision, and that then only the decision leaves no grievance (in the

357. तत्र ब्राह्मणा अनियुक्ताः सभासदस्तु नियुक्ता इति भेदः । मिता. on या. II. 2.

358. अन्यायेनापि तं यान्तं येऽनुयान्ति सभासदः । तेऽपि तद्भागिनस्तस्माद् बोधनीयः शनैर्नृपः ॥ अधर्माय यदा राजा नियुञ्जीत विवादिनाम् । विज्ञाप्य नृपतिं सभ्यस्तदाकार्यं निवर्तयेत् ॥ कात्या. q. in स्मृतिच॰ II. p. 21, राज. र. pp. 24–25.

359. नियुक्तो वानियुक्तो वा धर्मज्ञो वक्तुमर्हति । दैवीं वाचं स वदति यः शास्त्रमुपजीवति ॥ नारद III. 2 (= शुक्र IV. 5. 28.)

mind of the litigants).[360] The V. P. (p. 27) states, following Jaimini XII. 2. 22, that the opinion of the majority of sabhyas is to prevail.[361] According to Gaut.[362] XI. 25 as interpreted by Aparārka p. 599, if there is a difference of opinion among the judges, the king is to seek the advice of those who are learned in the three Vedas (along with the other *vidyās*) and decide the matter finally. Kāt. (58–59) states that the court of justice should have associated with the task of deciding disputes some merchants who belong to a guild, who are men of good family and character, of mature age, endowed with wealth and decent conduct and free from malice. The Mit. and Sm. C. say that this is done to placate the common people in the country.[363] This also shows the growing importance of the moneyed classes and of traders. In the Mṛcchakaṭika a śreṣṭhin and a kāyastha are associated with the Judge.

The chief judge and the sabhyas[364] were not to hold conversation in private with any one of the litigants while the suit was pending and if they did so they were liable to be fined (Kāt. 70). Kauṭ. IV. 9 prescribes fines and even corporal punishments for judges (*dharmasthas*) and pradeṣṭṛs who corruptly give wrong decisions, cause loss or sentence to corporal pūnishment. If the sabhyas[365] give a decision, which is opposed to smṛti and usage, through friendship, greed or fear, each was liable to be fined twice as much as the fine to be paid by the defeated party (Yāj. II. 4, Nār. I. 67, Kāt. 79–80). The Viṣṇu Dh. S. V. 180 and Bṛ. prescribe banishment and forfeiture of all property for

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360. यत्र सभ्यो जनः सर्वः साध्वेतदिति मन्यते । स निःशल्यो विवादः स्यात् सशल्यः स्यादतोन्यथा ॥ नारद (III. 17).

361. संख्यावैषम्ये तु भूयोल्पविरोधे भूयसां स्यात्सधर्मत्वमिति न्यायेन विप्रतिपत्तावधिकसंख्यावचनमादरणीयं गुणसाम्ये । व्य. प्र. p. 27. जैमिनि's sūtra (XII. 2. 22) is विप्रतिषिद्धधर्माणां समवाये भूयसां स्यात्सधर्मत्वम् ।

362. विप्रतिपत्तौ त्रैविद्यवृद्धेभ्यः प्रत्यवहृत्य निष्ठां गमयेत् । गौ. XI. 25; विचारकाणामन्योन्यविप्रतिपत्तौ त्रैविद्यवृद्धेभ्यः समधिगतचतुर्दशविद्यास्थानेभ्यो न्यायं प्रत्यवहृत्यावगम्य व्यवहारं निष्ठां समाप्तिं निर्णयं गमयेत् । अपरार्क p. 599.

363. कुलशीलवयोवृत्तवित्तवद्भिरमत्सरैः । वणिग्भिः स्यात्कतिपयैः कुलभूतैरधिष्ठितम् ॥ श्रोतारो वणिजस्तत्र कर्तव्या न्यायदर्शिनः । कात्या. quoted by मिता. (on या. p. 2), स्मृतिच॰ II. p. 17, परा. मा. III. p. 31, व्य. प्र. p. 31 (which explains कुलभूतैः as वृद्धैः).

364. अनिर्णीते तु यद्यर्थे सम्भाषेत रहोर्थिना । प्राड्विवाकोथ दण्ड्यः स्यात्सभ्यश्चैव विशेषतः ॥ कात्या. q. by अपरार्क p. 604, व्य. मा. p. 283, परा. मा. III. 35.

365. स्नेहादज्ञानतो वापि लोभाद्वा मोहतोपि वा । तत्र सभ्योऽन्यथावादी दण्ड्योऽसभ्यः स्मृतो हि सः ॥ कात्या. q. by अपरार्क p. 603, स्मृतिच. II. p. 22.

sabhyas that give an unjust decision or take bribes. Kāt. 81 prescribes that the loss caused by the fault of sabhyas must be made good by them to the losing party, but the decision given by them will stand[366]. Śukra (IV. 5. 63–64) prescribes the punishment of a thief for a *lekhaka* (a scribe) taking down a different deposition from the one actually given or for a sabhya making use of such a deposition knowingly; IV. 5. 93 prescribes fine and removal from office if a sabhya gives a wrong decision through greed &c. and IV. 5. 282 prescribes a fine of 1000 paṇas against a judge giving a corrupt decision. There must have been a few cases of judges taking bribes in ancient India as in modern times (even Lord Bacon in the 17th century was found guilty of taking bribes as Lord Chancellor and confessed his guilt). In the Daśakumāracarita[367] (VIII. p. 131) the cynical jester Vihārabhadra says to his king that judges decide matters just as they please after taking bribes and the king thereby incurs infamy and the sin of doing injustice. It was believed that when a just decision was given, the king and the sabhyas became free from sin, the sin reaches him only who is guilty (whether plaintiff or defendant); but where an unjust decision is rendered a quarter of the sin falls on the litigant (plaintiff or defendant) who is guilty of *adharma*, one quarter each on the witnesses, the sabhyas and the king. The Baud. Dh. S. I. 10. 30–31, Manu VIII. 18–19, Nār. (III. 12–13) have the same two verses. The Vyavahāratattva (p. 200) says that Hārīta also had the same verses. In the Mattavilāsa-prahasana (pp. 23–24) reference is made to the giving of bribes to the presiding officers of courts (we should read '*adhikaraṇa-karaṇikānām*' instead of '— kāruṇikānām). Kauṭ. IV. 4 makes it a duty of the *samāhartṛ* to employ spies in various disguises to test the honesty of judges (dharmasthas) and magistrates (pradeṣṭṛs) and, if they were found to be ready to succumb to bribes, to order their banishment.

As to *sabhā*, vide pp. 92–93 above. The Nirukta (III. 5) in explaining Ṛg. I. 124. 7 (*gartārug-iva sanaye dhanānām*) states that *gartā* means a wooden board or stump in a sabhā on which a sonless widow claiming her husband's wealth had to stand when claiming it.

366. सभ्यदोषात्तु यन्नष्टं देयं सभ्येन तत्तदा । कार्यं तु कार्यिणामेव निश्चितं न विचालयेत् ॥ कात्या. q. by स्मृतिच. II. p. 23, स. वि. p. 69.

367. द्वितीयेऽन्योन्यविवदमानानां प्रजानामाक्रोशान् शृण्वमानकर्णः कष्टं जीवति । तत्रापि मार्गविचारकादयः स्वेच्छया जयपराजयौ विदधानाः पापेनाकीर्त्या च भर्तारमात्मानं चार्थैर्योजयन्ति । दशकुमारचरित VIII. p. 131.

A court of justice was (acc. to Bṛ.[368]) of four kinds, viz. one established (*pratiṣṭhitā*) in a fixed place such as a town, *apratiṣṭhitā* (not fixed in one place, but moving from place to place as on a circuit), *mudritā* (the court of a judge appointed by the king, who is authorised to use the royal seal), *śāsitā* (or śāstritā, acc. to S. V. p. 68 and Par. M. III. p. 24) i. e. the court in which the king himself presides. The Court of justice (in the capital) was to be to the east of the palace as stated by Śaṅkha and Bṛ. (in Sm. C. II. p. 19) and was to face the east. The court-house should be decorated[369] with flowers, statues, paintings, idols of gods and should be furnished with incense, throne or seat (for the king or judge), seeds, fire and water (Bṛ. in Sm. C. II. p. 19). The sabhā was also called, as stated above, dharmādhikaraṇa or simply adhikaraṇa (in Mṛcchakaṭika IX and the Kādambarī, para 85) or dharmasthāna or dharmāsana or sadas (Vas. 16. 2). The Kādambarī (para 85) speaks of the royal palace as having a court of justice where the judges (dharmādhikārins) sat on high cane seats. The time for holding the court is the morning, acc. to Manu VII. 145, Yāj. I. 327. Kauṭ. states that the king[370] should look into the disputes of people in the 2nd part of the day divided into eight parts. The Dasakumāracarita (note 367 above) shows the same thing. Kāt. (61–62) prescribes that the time for holding the court as laid down in the śāstras is three parts of the day after the first part (when the day is divided into eight parts) i. e. from 7–30 A. M. to noon. There were holidays on which courts were closed i. e. on 8th and 14th *tithis*, Full Moon day and the *amāvāsyā* of every month (Saṁvarta acc. to Par. M. III. p. 23, Hārīta, acc. to S. V. p. 72). The sabhā is said to have ten *aṅgas*

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368. प्रतिष्ठिता पुरे ग्रामे चला नामाप्रतिष्ठिता । मुद्रिताध्यक्षसंयुक्ता राजयुक्ता च शासिता ॥ बृहस्पति q. by अपरार्क p. 600 ; राज. र. p. 20 ascribes it to हारित.

369. माल्यधूपासनोपेतां बीजरत्नसमन्विताम् । प्रतिमालेख्यदेवैश्च युक्तामग्न्यम्बुना तथा ॥ बृह. in राजधर्मकाण्ड p. 30, स्मृतिच. II. p. 19 and व्य. नि. p. 5. It is probably such a hall decorated with statues and pictures that is referred to in the play Kundamālā (p. 10) 'सुश्रूषयितव्यः प्रतिमागतो महाराजः' (in Prākrit), in which some scholars find a reference to the play called Pratimā, one of the Trivandrum plays. अधिकरणमण्डपगतैश्चार्यैर्वेत्रासनोपविष्टैर्धर्ममयैरिव धर्माधिकारिभिर्महापुरुषैरधिष्ठितम् (राजकुलम्) । कादम्बरी para 85.

370. नालिकाभिरहरष्टधा रात्रिं च विभजेत् । ... ... द्वितीये पौरजानपदानां कार्याणि पश्येत् । अर्थशास्त्र I. 19 : आद्यादह्नोऽष्टभागाद्यदूर्ध्वं भागत्रयं भवेत् । स कालो व्यवहारस्य शास्त्रदृष्टो मनीषिभिः ॥ कात्या. q. by अपरार्क p. 601, स्मृतिच. II. p. 27, स वि. p. 72.

by Br.[371] viz. the king, the chief judge appointed by him, the sabhyas, smṛti, gaṇaka (accountant), lekhaka (the scribe), gold, fire, water and *svapuruṣa* (a bailiff, otherwise called sādhyapāla). The chief judge declares (the law), the king awards punishment, the sabhyas examine the dispute, smṛti (dharmaśāstra) lays down the rule of decision, the success (of one party or the other) and the punishment; gold and fire are required for taking oaths, the water is for men when they feel thirsty, the gaṇaka counts the wealth or subject matter of dispute, the scribe writes down the pleadings, depositions and the decision, the *puruṣa* summons the sabhyas, the defendant, the witnesses and he guards the complainant and the defendant when they have furnished no surety (for appearance). It is further said that of these ten *aṅgas* (limbs) the king is the head, the judge the mouth &c. Acc. to Br. (q. in Par. M. III. p. 30) and Śukra IV. 5. 43 the accountant and the scribe were to be proficient in grammar, lexicography and counting, were to be pure (in character) and conversant with several alphabets. Puruṣa was called sādhyapāla, who was to be hereditary, strongly built, a śūdra and obedient to the sabhyas (Vyāsa in Par. M. III. p. 30, V. P. p. 31). The ten aṅgas enumerated above (viz. king &c.) are respectively identified with the head, the mouth, the arms, the hands, the thighs (gaṇaka and lekhaka), the two eyes (gold and water), the heart, feet (Br. in V. P. p. 31, Hārīta in Rāj. R. p. 20). In the Hall of Justice the king faces the east, the sabhyas, the accountant and the scribe respectively face the north, the west and the south (Br. in Par. M. III. p. 35, Vyavahārasāra p. 25). Omitting the king and the chief judge the sabhā is said to have eight aṅgas in certain works (e. g. S. V. p. 72). The chief justice, the sabhyas and the learned brāhmaṇas were probably elderly people, as great emphasis is laid on this by Nār. (III. 18) and Udyogaparva 35. 58 'that is not a real sabhā where there are no elderly men &c.'[372].

371. नृपाधिकृतसभ्याश्च स्मृतिर्गणकलेखकौ । हेमाग्न्यम्बुस्वपुरुषाः साधनाङ्गानि वै दश ॥ ... वक्ताध्यक्षो नृपः शास्ता सभ्याः कार्यपरीक्षकाः । स्मृतिर्विनिर्णयं ब्रूते जयदानं दमं तथा । शपथार्थे हिरण्याग्नी अम्बु तृषितजन्तुषु । गणको गणयेदर्थं लिखेन्न्यायं च लेखकः । प्रत्यर्थिसभ्यानयनं साक्षिणां च स्वपुरुषः । कुर्यादलग्नको रक्षेदर्थिप्रत्यर्थिनौ सदा ॥ बृहस्पति q. in अपरार्क p. 600, स्मृतिच॰ II. p. 20, परा. मा. III. p. 31; राज. र. (pp. 20–21) attributes these to हारीत. Vide शुक्र. IV. 5. 38–42 for the verses up to लेखकः.

372. न सा सभा यत्र न सन्ति वृद्धा वृद्धा न ते ये न वदन्ति धर्मम् । नासौ धर्मो यत्र नो सत्यमस्ति न तत्सत्यं यच्छलेनानुविद्धम् ॥ नारद III. 18 = उद्योगपर्व 35. 58 (reads यच्छलेनाभ्युपेतम्). Acc. to a verse quoted from the राजधर्म by the भाष्य on सत्या. श्रौ. सू. a सभा is of three kinds: सभास्तु तिस्रो विज्ञेया धर्मस्यैका च कर्मणः । तथा राजसभेत्येता विद्वद्भिः परिकीर्तिताः ॥ The first (धर्मसभा) dealt with व्यवहार and प्रायश्चित्त, the 2nd (कर्मसभा) was a hall where sacrifices were performed and the 3rd (राजसभा) was the royal *durbar* attended by brāhmaṇas, warriors, royal officers and servants.

In the drama Mṛcchakaṭika (Act IX) we have a graphic, though brief, description of judicial procedure in ancient India. That drama is at least as old as the 4th or 5th century A. D. It is very instructive to compare the procedure described in it with that gathered from Nār., Bṛ. and Kāt. who constitute the leading triumvirate on law and procedure in the smṛtis and who probably flourished a little before and a little after the drama. It will be found on comparison that the procedure in the drama is in essentials the same as that of the three smṛtis mentioned above, though there is some difference in minor details. The principal points in the drama bearing on judicial administration may be brought together here at one place. The court house was called ' adhikaraṇa ' ; the chief judge was called adhikaraṇika ; he was assisted by the *śreṣṭhin* (a prominent merchant or banker) and a *kāyastha* ; all three are referred to as ' adhikaraṇabhojaka ' and are addressed as *adhikṛta* or *niyukta* (appointed by the king) ; when a despot was on the throne, the judge's position was precarious and he could be deprived of the post at the king's sweet will (the Śakāra, king's brother-in-law, threatens the chief justice with summary dismissal). There was a servant who arranged the seats in the court, inquired whether there was any litigant, summoned Vasantasenā's mother and Cārudatta (this man corresponds to the puruṣa or sādhyapāla) ; inquiry was made by the judges as to whether any one wanted to file a suit or complaint ; the śreṣṭhin and kāyastha are asked by the presiding judge to write down the important parts of the complainant's statement ; a private person (who was not a relative) could complain to the court about an alleged murder ; the judge allowed an old person like the mother of Vasantasenā and a respectable and well-known citizen like Cārudatta to occupy a seat when replying to questions from the court, but Cārudatta was deprived of this concession when a *prima facie* case was made out against him ; the court-house (being probably situated near the palace) had near it mantrins, dūtas, spies, an elephant and a horse (and the chief of the city police is asked to ride the horse and find out whether the corpse of a woman lay in the public garden), and kāyasthas ; Cārudatta was called upon to state the truth and the judge tells him that in the court no trick (*chala*) will be allowed to pass ;[373] when a strong case was

373. Compare छलं निरस्य भूतेन व्यवहारान्नयेन्नृपः। याज्ञ. II. 19; भूतच्छलानुसारित्वाद् द्विगतिः समुदाहृतः । नारद I. 29 ; न तु शिष्टं छलं राजा मर्षयेद्धर्मसाधनः। भूतमेव प्रपद्येत धर्ममूला यतः श्रियः॥ नारद I. 31.

made out against Cārudatta by circumstantial evidence he was asked to confess his guilt, otherwise he was told that he would be whipped (i. e. this refers to whipping to extort a confession, vide above note 332); the judge was only to pronounce the judgment and recommend the legal punishment, while the king had the last word about the exact punishment; Manu's work was an authority ; a brāhmaṇa offender was not to be sentenced to death, but was to be banished with all his wealth, though some kings did not act up to this rule ; impalement was carried out by cāṇḍālas ; ordeals of fire, water, poison and balance were known and Śūdraka conveys (*viṣasalilatulāgniprārthite me vicāre*) that Cārudatta had prayed for trial by ordeal, but that the chief justice, because there were witnesses and circumstantial evidence, refused that request.

The court so far described (i. e. where the king or the chief justice appointed by him presided) was the highest court. But other tribunals were recognized in the smṛtis and digests. Yāj. I. 30 and Nār. (I. 7) state[374] that law-suits may be decided by village councils (*kulāni*), corporations (*śreṇi*), assemblies (*pūga* in Yāj., *gaṇa* in Nār.), the judges appointed by the king and the king himself, each later one being superior to each preceding one. The first three were practically arbitration tribunals like the modern *panchayats*. The several words here require explanation and they have been differently interpreted by different digests. Medhātithi on Manu VIII. 2 explains these words at great length. Acc. to him 'kulāni' means 'group of relatives' and also (acc. to some) 'impartial persons' (madhyasthapuruṣāḥ) and '*gaṇa*' means 'builders of houses and mansions or brāhmaṇas dwelling in maṭhas'. Acc. to the Mit. and V. P. p. 29 'kulāni' means 'an assembly of the relations, agnatic and cognatic, of the litigants'; acc. to the Sm. C. it means 'the agnates of the parties'; acc. to Aparārka it means 'husbandmen'. It appears likely that 'kulāni' means officers who presided over a group of eight or ten villages and who were granted the produce of one *kula* of land as their salary. Vide Manu VII. 119 and Kullūka thereon and Dāmodarpur plate of Gupta year 124 in which the head of the district (viṣayapati) is said to have been assisted by the nagaraśreṣṭhin, prathama-kulika and prathama-kāyastha (E. I. 15 p. 130) and

374. कुलानि श्रेणयश्चैव गणश्चाधिकृतो नृपः । प्रतिष्ठा व्यवहाराणां गुर्वेभ्यस्तूत्तरोत्तरम् ॥ नारद (I. 7).

'grāmāṣṭa-kul ādhikaraṇam' in E. I. vol. 17 p. 345 at p. 348 in the reign of Ku māragupta I. From the Sanchi stone Inscription of Chandragupta II (of the Gupta year 93 i. e. 412–13 A. D.) it appears that *panchayats* were called 'pañcamaṇḍalī' (Gupta Inscriptions pp. 29, 31). 'Śreṇi' means, acc. to most commentators, 'the corporation of persons following the same craft or avocation, though they may belong to different castes' such as horse-dealers, betel-leaf sellers, weavers and dealers in hide. Acc. to the V. M. p. 280, 'śreṇi' is an association of artisans or traders'. 'Pūgas' are assemblies of men of one place (a village or a town) belonging to different castes and following different avocations. Kāt. (225 and 682) distinguishes between *gaṇa* and *pūga* which he respectively defines as 'assembly of families' (*kulas*) (Sm. C. II. p. 18, Par. M. III. p. 352) and 'assemblies of traders and the like' (V. R. p. 668). V. P. p. 30 says *gaṇa* and *pūga* are synonyms. The king was thus the highest court of appeal and next to him was the court of the judges appointed by him. Bṛhaspati (S. B. E. vol. 33 p. 281 verse 28) ordains[375] that the kulas, śreṇis and gaṇas that are well-known to the king may decide the disputes of litigants except those that fall under *sāhasa* and that it was only the king who could carry out the order for fines or corporal punishments, i. e. the arbitration courts could only decide disputes not involving *sāhasa* and they had no power to execute their decrees about fines and corporal punishments, but that their decisions had to be filed with the king, who, if he did not disapprove of them, put them into execution. Pitāmaha[376] appears to mention three classes of State courts, while Yāj. and Nār. refer only to two (viz. that of the chief justice and that of the king himself): 'a dispute decided in a village may be taken to the city and one examined in the city (court) to the king; a dispute decided by the king whether correctly or incorrectly cannot be reviewed.' It is distinctly

375. वाग्दण्डो धिग्दमश्चैव विप्रायत्तावुभौ स्मृतौ। अर्थदण्डवधावुक्तौ राजायत्तावुभावपि। राज्ञा ये विदिताः सम्यक्कुलश्रेणिगणादयः। साहसन्यायवर्ज्यानि कुर्युः कार्याणि ते नृणाम्॥ बृह. in स्मृतिच० II. 20, परा. मा. III. p. 32, स. वि. p. 68, व्यव. सा. p. 22. For the first, vide शुक्र IV. 5. 279 and the second is शुक्र IV. 5. 30 which reads साहसस्तेयवर्ज्यानि.

376. ग्रामे दृष्टः पुरं यायात्पुरे दृष्टस्तु राजनि। राज्ञा दृष्टः कुदृष्टो वा नास्ति तस्य पुनर्भवः॥ पितामह in स्मृतिच. II. p. 19, परा मा. III. p. 42.

provided by Br.[377] (S. B. E. vol. 33 p. 282 verse 31) that the sabhyas are superior to the *kulas* and the rest, the chief justice is superior to sabhyas and the king is superior to all. Pitāmaha[377a] provides that when a litigant is not satisfied with the decision given by a kula tribunal or the others, he can carry the matter by way of appeal to the king. Besides these courts it appears from Kauṭilya that the village headman (*grāmika* or *grāmakūṭa*) exercised certain summary powers such as driving out of the village a thief or an adulterer (III. 10) and that he could try some offences (IV. 4, *grāmakūṭamadhyakṣam vā satrī brūyāt* &c.). Even in the 20th century in the Bombay Presidency under the Village Police Act (Bombay Act VIII of 1867) the village headman (called Police Patil) has the authority to try and on conviction to punish with confinement for a period not exceeding twenty-four hours any person charged with the commission of petty assault or abuse within the limits of a village and the person convicted has no right of appeal to any court or magistrate against such conviction and only the High Court has the power to entertain a petition for revision (which it hardly ever does). Bhṛgu[378] quoted in Sm. C. II. p. 18 and other digests says that there are ten tribunals common to all men viz. the village people, the assembly of the citizens of the capital, gaṇa, śreṇi, men learned in the four vedas (or *vidyās* viz. ānvīkṣikī and the rest), the *vargins, kulas, kulikas,* judges (appointed by

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377. विचार्य श्रेणिभिः कार्यं कुलैर्यन्न विचारितम्। गणैश्च श्रेण्यविज्ञातं गणाज्ञातं नियुक्तकैः॥ कुलादिभ्योऽधिकाः सभ्यास्तेभ्योऽध्यक्षोऽधिकः कृतः। सर्वेषामधिको राजा धर्म्यं यत्तेन निश्चितम्॥ बृह. in व्य. प्र. p. 30. शुक्र IV. 5. 32 has the last verse, the last pāda being धर्माधर्मनियोजकः. The व्य. प्र. p. 30 explains: कुलादीनां ज्ञात्यादिरूपाणां दाक्षिण्यादिनान्यथादर्शनमपि संभाव्यते ... । श्रेणीनामुदासीनतया ततो बलवत्ता । पूगानां त्वेकस्थानवासमात्रसम्बन्धेऽपि भिन्नजातितया भिन्नवृत्तितया च ततोऽपि मिथोऽनपेक्षत्वादौदास्याद्बलवत्त्वम् । नृपाधिकृतानां ततोऽपि निःसम्बन्धतया राज्ञा परीक्ष्याधिकृतानां राजभयादपि पक्षपातदाक्षिण्याद्यसंभव इति पूगेभ्यो बलवत्त्वम् ।

377a. कुलादिभिः कृतं कार्यं विचार्यं तद्यथोत्तरम्। असन्तुष्टस्य कर्तव्यं यावद्राज्ञा कृतं भवेत्॥ पितामह q. by व्य. नि. p. 15.

378. दश स्थानानि वादानां पञ्च चैवाब्रवीद्भृगुः। निर्णयं येन गच्छन्ति विवादं प्राप्य वादिनः॥ आरण्यास्तु स्वकैः कुर्युः सार्थिकाः सार्थिकैस्तथा। सैनिकाः सैनिकैरेव ग्रामेऽप्युभयवासिनः॥ उभयानुमतं चैव गृह्यते स्थानमीप्सितम्। कुलिकाः सार्थमुख्याश्च पुरग्रामनिवासिनः॥ ग्रामपौरगणश्रेण्यश्चातुर्विद्यश्च वर्गिणः। कुलानि कुलिकाश्चैव नियुक्ता नृपतिस्तथा॥ भृगु q. by स्मृतिच॰ II. p. 18, परा. मा. III p. 24, स. वि p. 67 (summary in prose), व्य. प्र. pp. 8-9. 'कुलिकाः केचनाधिगोत्रा वृद्धाः' स्मृतिच., 'कुलिकाः कुलश्रेष्ठाः' व्य. प्र. p. 9; 'सार्थिनो ग्रामयात्रादौ मिलितो जनसङ्घः। मुख्या ग्रामण्यादयः' परा. मा. III. p. 25; 'सार्थो ग्रामदेवयात्रादौ मिलितो जनसङ्घः तन्मुख्याः सार्थवाहादयः।' व्य. प्र. p. 9. It should be noted that here कुलानि and कुलिकाः are separate tribunals.

the king) and the king himself. The *vargins*[379] are the groups of various kinds such as gaṇas, pūgas, vrātas, śreṇis and others. Kulikas may be the elders of the families of the plaintiff and the defendant. In the Dāmodarpur plates (E. I. 15 p. 130) we come across one Dhṛtimitra who is described as 'prathamakulika'. The word 'pañcakula' was applied to certain high officers in Gujarat and Kathiawad; vide I. A. vol. 11 p. 220 (Abu Ins. of Bhīmadeva dated Vikrama year 1265) and Tawney's translation of the Prabandha-cintāmaṇi pp. 18, 84, 129, 149, 190 for 'pañcakula'. The provisions about the conflict between customs and usages on the one hand and *śruti* and *smṛti* on the other will be dealt with in detail later on in another section. A few words may be said here about conflicts between smṛtis. In disputes between residents of the same country, the same city or the same hamlet of cowherds or of the same capital or village, the decision should be according to their own conventional usages, but in disputes between these and others (who are not residents of those respective places) the decision must be in accordance with the sacred texts[380] (Kāt. 47 q. in S. V. p. 72, Par. M. III. p. 41). Another rule is that when there is an apparent conflict between two smṛtis, reasoning is to decide in ordinary life which should be followed or reasoning based on the actions of the aged and the experienced is to decide what text to follow (Yāj. II. 21) and the business of the interpreter consists in holding that one of the smṛtis contains a general rule and the other an exception or that the two apply to different sets of circumstances (viṣaya-vyavasthā) or that an option may be intended. Voluminous glosses have been written on this one text of Yāj II. 21 right from Viśvarūpa in the 9th century downwards. Another rule is that in the administration of justice dharmaśāstra rules have superior force to those of arthaśāstra. This has been already referred to above (p. 9). Bhṛgu further provides that foresters may get their disputes settled by foresters, members of caravans by other members, soldiers by (a tribunal of) soldiers and those who stay in a village as well as in a forest may get their disputes settled either by villagers or by foresters by mutual

379. गणाः पाषण्डपूगाश्च व्राताश्च श्रेणयस्तथा । समूहस्थाश्च ये चान्ये वर्गाख्यास्ते बृहस्पतिः ॥ कात्या. q. by स्मृतिच. II p. 18, स. वि. p 67; प्रामाण्यमेव ये वेदे न वदन्ति कुदृष्टयः । तेषां बौद्धार्हतादीनां पाषण्डाख्या प्रकीर्त्यते ॥ षट्त्रिंशन्मत q. by व्य. नि. p. 13.

380. देशपत्तनगोष्ठेषु पुरग्रामेषु वासिनाम् । तेषां स्वसमयैर्धर्मशास्त्रतोऽन्येषु तैः सह ॥ कात्या. q. by परा. मा. III. p. 41, स. वि. p. 72. स्मृतिच. II. p. 26 appears to ascribe it to पितामह.

agreement and that the five tribunals for foresters and others are *kulikas* (high officers or heads of families), *sārthas* (members of caravans), headmen, villagers, citizens. The texts further provide that in certain cases the court was to call in aid outsiders to help in deciding disputes. Vyāsa[381] says: 'In the case of disputes among traders, artisans, husbandmen and actors it is impossible for others to give a (correct) decision; hence such matters should be got decided by experts in those various matters'. Bṛ. states that in disputes among husbandmen, craftsmen (carpenters and the like), artisans (like painters), money-lenders, guilds, dancers, sectarians (like Pāśupatas) and criminal tribes the decision should be made with the help of those who understand the conventions made by them and their usages. In disputes about the boundaries of villages and about fields in a village, four, eight or ten neighbours were to settle the boundaries (vide Manu VIII. 258, Kauṭ. III. 9, Yāj. II. 150-152). Kauṭ. I. 19 and Bṛ.[382] (q. in V. P. p. 23) say that disputes between those who have performed austerities or between those who are adepts in witchcraft and Yoga should not be decided by the king (unaided), but with the help of those learned in the three Vedas, as otherwise they may feel offended. These quotations show that certain people could claim to be tried by their peers or at least by a jury. This jury system was resorted to for settling complicated questions of fact. It is a very ancient system, being mentioned even by Gautama[383] XI. 21-22 'the king, having received help from the heads of husbandmen, merchants, cowherds, money-lenders and artisans as regards disputes in their own groups, should finally decide what is just'.

It has already been stated above that the king is to decide according to the smṛtis. He has also to take into consideration the duties and usages of the several varṇas and the eighteen low

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381. वणिक्शिल्पिप्रभृतिषु कृषिरङ्गोपजीविषु । अशक्यो निर्णयो ह्यन्यैस्तज्ज्ञैरेव कारयेत् ॥ व्यास quoted in परा मा. III. p. 42, व्य. प्र. p. 23; कीनाशाः कारुकाः शिल्पिकुसीदिश्रेणिनर्तकाः । लिङ्गिनस्तस्कराः कुर्युः स्वेन धर्मेण निर्णयम् ॥ बृहस्पति, quoted in व्य. प्र. p. 23. This is शुक्र IV. 5. 18.

382. तपस्विनां तु कार्याणि त्रैविद्यैः सह कारयेत् । मायायोगविदां चैव न स्वयं कोपकारणात् ॥ कौटिल्य I. 19 towards end, बृह. in व्य. प्र. p. 23. व्य. मा. p. 281 ascribes it to both बृह. and कात्या.

383. कर्षक-वणिक्-पशुपाल-कुसीदि-कारवः स्वे स्वे वर्गे । तेभ्यो यथाधिकारमर्थान्प्रत्यवहृत्य धर्मव्यवस्था । गौ. XI. 21-22.

castes[384] (acc. to Manu VIII. 41 and Hārīta). The eighteen low castes said to be outside the pale of the four varṇas and āśramas are enumerated by Pitāmaha, viz. washerman, shoe-maker, naṭa (dancer caste), bamboo-worker, fisherman, mleccha, bhilla, ābhīra, mātaṅga and nine others (the names of which are not given here as the text is corrupt).

The foregoing gradations of tribunals did not all exist at all times in ancient and medieval India. One thing is, however, quite clear. There was always a court of the Chief Justice appointed by the ruling power and final appeal lay to the ruler himself. But as regards inferior tribunals usage varied. For example, it appears from a decision of 1742 in which a ruling of king Shivaji about a Kulkarni *vatan* is set out that in Shivaji's time disputes could be taken before three different but inferior tribunals, viz. the *got* (i. e. the assembly of castemen) which is somewhat like the *kula* tribunal of the smṛtis, or before arbitrators hailing from a place other than where the dispute took place or before the officers, *balutedars* and chief men of several villages round about.[385]

Manu (VIII. 23) prescribes that the king fully dressed and with an undisturbed mind, after taking his seat in the Hall of Justice, should perform obeisance to the gods, the guardians of the (eight) quarters (Indra and others, as specified in Manu VII. 4) and should then commence the work of looking into the legal business. The transaction of legal business has four stages (from the king's or judge's point of view) viz. first receiving information from a person, then finding out under what title of law (vyavahārapada) the information falls, then consideration of the pleadings of the parties and the evidence

384. शास्त्राणि वर्णधर्मास्तु प्रकृतीनां च भूपतिः । व्यवहारस्वरूपं च ज्ञात्वा तत्सर्वमाचरेत् ॥ हारीत in स्मृतिच० II. p. 29, परा. मा. III. p. 46, स. वि. p. 74 ; प्रकृतयः पितामहेन दर्शिताः । रजकश्चर्मकारश्च नटो बुरुड एव च । कैवर्तकश्च विज्ञेयो म्लेच्छभिल्लौ तथैव च । ... एताः प्रकृतयः प्रोक्ता अष्टादश मनीषिभिः । वर्णानामाश्रमाणां च सर्वदा तु बहिः स्थिताः । स्मृतिच० II. p. 29, परा. मा. III. p. 46.

385. Vide 'Vatanpatreṁ, Nivādapatreṁ' edited by Messrs Mavji an Parasnis (1909 A. D.) in Marathi p. 12 at p. 18 'सदरहू दोघांच्या तकरिरा मनास आणून दोघा वादियांस म्हटलें कीं तुम्ही गोतास राजी असाल तर गोतास पाठवूं अगर परस्थळास राजी असाल तर परस्थळास पाठवूं अगर हमशाई गांवीचे मोकदम व मोस्तेसर व मोजे मजकूरचे मोकदम व बारा बलुते यांसी राजी असाल तर त्यांचे गोहीवरून मनसुफी करून जे गोष्टी तुम्हास मानली तें सांगणें.'

led by them and lastly the decision.[386] When a litigant comes before the court at a proper time (i. e. when the court is sitting) and makes his bow, he (the king or judge) should[387] address him as follows :—" What is your business ? What is the injury done to you ? Don't be afraid, speak out, man ! By whom, when, where and why (was the injury caused) ? When thus asked whatever he replies should be considered by (the judge) with the sabhyas and brāhmaṇas and if the matter be legally entertainable he (the judge) should deliver the seal (sealed order) to the plaintiff or order the bailiff to summon (the defendant)". These observations are made by Kāt. (86–88). Whatever a man, being excited by one of the emotions of love (or anger or greed), says before the court, should be first written down on a board or the like by the scribe (Nār.[388] II. 18).

Very elaborate rules are laid down about the summoning of the defendant or accused by Nār. (I. 52–54), Bṛ, Kāt. (96–100), Śukra (IV. 5·102–106) and others. A few of the rules are set out below. The first person to be summoned is the one against whom a complaint based on suspicion or truth is made by the plaintiff or complainant. But other persons may be called as defendants[389] either when the person proceeded against by the plaintiff puts forward another as liable to plaintiff's claim or makes another liable along with himself or when another person is accepted by the plaintiff (on behalf of another who is a minor &c.) or (acc. to the Madanaratna) another person himself comes forward (as defendant). The king should not require the personal appearance of the following persons : the diseased, minors, very old (beyond 70), one in a calamity, one engaged in some

386. आगमः प्रथमं कार्यो व्यवहारपदं ततः । चिकित्सा निर्णयश्चैव दर्शनं स्याच्चतुर्विधम् ॥ नारद (I. 36). For explanation, vide स्मृतिच० II. p. 29, स. वि. p. 75.

387. काले कार्यार्थिनं पृच्छेत्प्रणतं पुरतः स्थितम् । किं कार्यं का च ते पीडा मा भैषीर्ब्रूहि मानव ॥ केन कस्मिन्कदा कस्मात्पृच्छेदेवं सभागतम् । एवं पृष्टः स यद्ब्रूयात् तत्सभ्यैर्ब्राह्मणैः सह । विमृश्य कार्यं न्याय्यं चेदाह्वानार्थमतः परम् । मुद्रां वा निक्षिपेत्तस्मिन्पुरुषं वा समादिशेत् ॥ कात्या. q. by मिता. on या. II. 5, परा. मा. III, 52 and 55, स्मृतिच० II. pp. 31, 32. The words किं कार्यं refer to a civil dispute and का च ते पीडा to a criminal dispute (हिंसामूल).

388. रागादीनां यदेकेन कोपितः करणं वदेत् । तदादौ तु लिखेत्सर्वं वादिनः फलकादिषु ॥ नारद (II. 18).

389. अधिकारोऽभियुक्तस्य नेतरस्यास्त्यसङ्गतेः । इतरोऽप्यभियुक्तेन प्रतिरोधीकृतो मतः । समर्पितोऽर्थिना योग्यः परो धर्माधिकारिणि । प्रतिवादी स विज्ञेयः प्रतिपन्नश्च यः स्वयम् ॥ कात्या. quoted by अपरार्क p. 639 (reads प्रतिरोधिकृतो मतः), स्मृतिच० II. p. 32, स. वि. p. 80.

religious rite, one who would suffer irreparable loss by coming, one in misfortune (such as the death or disappearance of a dear relative), one engaged in the king's business or in a (religious) festival, one intoxicated, a lunatic, one distressed, a servant, a woman[390] who is young and whose family is in straitened circumstances or who is of good family or who is recently delivered, a maiden who is of a higher caste than that of the complainant. Nār. (I. 53) prescribes that cowherds when it is the season for taking cows for grazing, agriculturists in the sowing season, artisans actually engaged in work and soldiers engaged[390a] in war should not be summoned to appear in person, while so engaged. In these cases some one on their behalf should be summoned as a representative. But it is provided that even these persons may be summoned with proper safeguards in important cases or grave charges, such as the killing of human beings, theft, rape, eating forbidden food, counterfeiting coins, high treason &c. But women who by their earnings support their families, unchaste women, prostitutes, women without family and women excommunicated for grave sins may be summoned to appear personally[391]. A person who is summoned and is able to appear but does not appear in person was to be fined according to the value or importance of the subject matter of dispute e. g. in slight causes fifty (copper) paṇas, two hundred at least in the cases of middling value and 500 paṇas at least in heavy causes (vide Kāt. 100–101 quoted by Sm. C. II. p 34, Aparārka p. 607.) After taking the fine and waiting for 30 days or a month and a half the king may give a judgment in favour of the plaintiff, due to defendant's default. But if the defendant does come after that time, the suit may be restored and proceeded with.[392] But when there is an invasion by an enemy or a famine or an epidemic or disease the king should not impose a fine, but send a second summons. In the case of those who are exempted from personal appearance (as above) their relatives (son, father &c.) or some other person

390. Compare sec. 132 of the Indian Civil Pro. Code (Act V of 1908) for exemption of certain women from personal appearance.

390 a. Compare the Indian Soldiers (Litigation) Act (IV of 1925).

391. Vide Mit. on Yāj. II. 5 (for quotations about most of these rules), Aparārka p. 606, Par. M. III. p. 51, Vyavahāra-mayūkha pp. 9–10.

392. एवं दण्डमादाय त्रिंशद्रात्रादूर्ध्वं त्रिपक्षाद्वा दशबन्धार्थं (त्रिपक्षाद्वा दशबन्धं ?) गृहीत्वा हानिनिमित्तजयपत्रं दद्यात्। एवं कृते यदि प्रतिवाद्यागच्छति पुनरपि व्यवहारदर्शनं कर्तव्यमिति। व्य. नि. p. 29.

appointed by them (such as a pupil, servant &c.) or one who can be recognised as their agent may be allowed to appear.[392a] But no representative was allowed in serious charges cited above (vide Kāt. 93–95 q. by Aparārka p. 639, Sm. C. II. p. 34). If a father, brother, a friend, or a relative appears before the court for the real litigant, the law-suit may be proceeded with (Pitāmaha). Whoever carries on anything through another by appointing him to that task should be understood to have done it himself and the business transacted by such a representative or agent cannot be annulled. If a person who is not a brother nor father nor son nor appointed to represent another prosecutes a law-suit for another, he is liable to be fined[393]. As the king was supposed to be the guardian of a minor's wealth, it appears from this that a king could have appointed a guardian for the suit when a minor was concerned. The above provisions show that maintenance and champerty were not encouraged by ancient Hindu lawyers.

An interesting question arises whether lawyers as an institution existed in ancient India. The answer must be that so far as the smṛtis are concerned, there is nothing to show that any class of persons whose profession was the same as that of modern counsel, solicitors or legal practitioners and who were regulated by the State existed. This does not preclude the idea that persons well-versed in the law of the smṛtis and the procedure of the courts were appointed (*niyukta*) to represent a party and place his case before the court. The procedure prescribed by Nār, Bṛ. and Kāt. reaches a very high level of technicalities and skilled help must often have been required in litigation. In the com. of Asahāya as edited by Kalyāṇabhaṭṭa on Nār. (ṛṇādāna 4) there is an instructive story from which it appears that persons who had studied the smṛtis helped parties in return for a monetary consideration to raise contentions

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392a. कुलस्त्रीबालकोन्मत्तजडार्तानां च बान्धवाः । पूर्ववादोत्तरे कुर्युर्नियुक्तो भृतकस्तथा ॥ q. by विवादचन्द्र p. 89, व्यव. त. p.201; अप्रगल्भजडोन्मत्तवृद्धस्त्रीबालरोगिणाम्। पूर्वोत्तरं वदेद्बन्धुर्नियुक्तोऽन्योऽथवा नरः। बृहस्पति q. by स्मृतिच॰ II. p. 33, व्य. प्र. p. 40; दासाः कर्मकराः शिष्या नियुक्ता बान्धवास्तथा । वादिनो न च दण्ड्याः स्युर्यस्त्वतोऽन्यः स दण्डभाक् ॥ कात्या. quoted by अपरार्क p. 639.

393. पिता भ्राता सुहृद्वापि बन्धुः सम्बन्धिनोऽपि वा । यदि कुर्युरुपस्थानं वादं तत्र प्रवर्तयेत् ॥ यः कश्चित्कारयेत्किंचिन्नियोगाद्येन केनचित् । तत्तेनैव कृतं ज्ञेयमनिवर्त्यं हि तत् स्मृतम् ॥ पितामह in स्मृतिच॰ II. p. 32; these are शुक्र IV. 5. 112–113; यो यस्यार्थे विवदते तयोर्जयपराजयौ । यो न भ्राता न च पिता न पुत्रो न नियोगकृत् । परार्थवादी दण्ड्यः स्याद् व्यवहारेऽपि विब्रुवन् ॥ नारद (II. 22–23). This is शुक्र IV. 5. 118.

before the court. But there also the helper comes forward saying that he is a very old friend of the family and has been appointed by the party to represent him. So he corresponded to what is called a recognized agent in the Indian Civil Pro. Code, Order III. r. 2 (Act V of 1908). In Śukra IV. 5. 114–117 some important rules are given :[394] the person who is appointed to represent a party should get as his wages 1/16, 1/20, 1/40, 1/80 or 1/160 part of the amount in dispute, that the wages become less and less as the claim in dispute becomes higher or if several persons employ one representative; one who knows dharmaśāstra and the procedure of law-suits should be appointed as representative and not any one who is deficient in these; if the representative takes wages without knowing these he should be punished by the king. A representative is to be appointed by the party and not by the king at his will; if the representative allows the matter entrusted to him to fail owing to his greed he is liable to be fined[395]. In the 'Questions of Milinda' (S. B.

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394. नियोगि (जि ?) तस्यापि भृतिं विवादात् षोडशांशिकीम् । विंशत्यंशां तदर्धां वा तदर्धां च तदर्धिकाम् ॥ यथा द्रव्याधिकं कार्यं हीना हीना भृतिस्तथा । यदि बहुनियोगी स्यादन्यथा तस्य पोषणम् ॥ धर्मज्ञो व्यवहारज्ञो नियोक्तव्योऽन्यथा न हि । अन्यथा भृति गृह्णन्तं दण्डयेच्च नियोगिनम् ॥ कार्यो निरयो नियोगी न नृपेण स्वमनीषया । लोभेन त्वन्यथा कुर्वन् नियोगी दण्डमर्हति ॥ शुक्र IV. 5. 114–117. The words भृति गृह्णन्तं present a difficulty. Probably there is a compound of भृति with गृह्णन्तम्.

395. The story in the com. on Nār. is as follows: In Pāṭaliputra (modern Pātnā) a brāhmaṇa named Śrīdhara acquired with great trouble a fortune and lent to a trader named Devadhara ten thousand *drammas* at the rate of 2 per cent per month. When one month passed Devadhara paid as interest 200 drammas. When the 2nd month was running, Devadhara died of high fever, his son died of cholera and only the great-grandson of Devadhara, by name Mahīdhara, remained. He was a very young man addicted to gambling and other vices. His property was taken under their protection by his maternal uncles. They were advised by a brāhmaṇa who had a smattering of smṛti lore and was called Smārtadurdhara 'Don't pay even a rupee to the creditor Śrīdhara. I shall save you even in Court by citing appropriate texts.' The uncles replied 'if you save us, we shall give you a thousand *drammas* as a reward'. When the 2nd month passed (from the date of borrowing), Śrīdhara called upon the uncles to pay 200 drammas as interest for the 2nd month. They replied 'You cannot claim even the principal (from the great-grandson of the original borrower), much less interest'. Smārtadurdhara, the legal adviser of the uncles, said "Nārada declares (ṛṇādāna 4) 'grandsons should pay the debts of the grandfather; that (debt) ceases from the fourth'. On hearing this Śrīdhara was stunned, but gathering his wits filed a suit in the court and had summonses issued

(*Continued on the next page*)

E. vol. 36 p. 238) there is a passage about certain *bhikkhus* in the 'city of Righteousness' (*dhammanagara*) who are styled 'dhammāpaṇikas' (dealers in dharma) and are described as follows: '(Bhikkhus), who in the spirit and the letter, in its arguments and explanations, its reasons and examples teach and repeat, utter forth and recapitulate the ninefold word of the Buddha; such bhikkhus are called, O king, lawyers in the blessed one's city of Righteousness' and on p. 239 there are 'dhammaseṭṭhino' (bankers of dharma), which word reminds us of the śreṣṭhin in the Mṛcchakaṭika. The dhammāpaṇikas probably correspond to such lawyers as Smārtadurdhara mentioned above. The rules of Śukra make a near approach to the modern institution of the Bar and the fees prescribed by Śukra are similar to those allowed by the Bombay Regulation II of 1827 and by Schedule III to the Bombay Pleaders' Act (Bombay Act XVII of 1920). The first legislative enactment in India to deal with lawyers for representing parties passed by the British Government was the Bengal Regulation VII of 1793 which defined the privileges, the fees (five per cent up to 1000 and then on a sliding scale) and responsibilities of *vakeels* (which word originally means 'agent').

The plaintiff may put under restraint till the approach of the summoner (the bailiff) by the king's order the defendant, who does not stand up to meet the claim (i. e. is about to abscond or may abscond) that is to be investigated (or when the plaintiff spoke to him about the claim before coming to court) and

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(*Continued from the last page*)

to Mahīdhara, great-grandson of Devadhara, and his uncles. Sureties were taken from both sides. The uncles were asked (by the court) 'why don't you pay the interest to Śrīdhara'? They appointed as their representative Smārtadurdhara, who said that he and his ancestors were friends of the family of Mahidhara and so he addressed the court 'I rely on Nārada's words (quoted above), and Mahīdhara being the fourth from Devadhara (including the latter) is not liable to pay'. Bhaṭṭa Smārtaśekhara laughed at this and said 'Smārtadurdhara, you are not deeply learned in the smṛti texts nor have you studied glosses thereon. The whole of the debt of 10000 drammas lent by Śrīdhara is still due from Mahīdhara, as he is the great-grandson of the borrower, as three male descendants of the borrower are liable to pay the ancestor's debt and as Nārada means only this that the son of the great-grandson (who is the fourth from the borrower, excluding the latter from computation) is not liable to pay the debt of his great-great-grand-father' and the learned speaker charged him with having been promised a gratification. Smārtadurdhara and his proteges lost the case.

who disregards the words of the claimant. This is called *āsedha* which is explained by the Mit. on Yāj. II. 5 as restraint under the king's order. It is of four kinds viz. restraint as to (*sthāna*) place (e. g. you are not to go elsewhere from your house or a temple), as to time (e. g. you must present yourself on the 5th of a certain month), restraint from going on (*pravāsa*) a journey (till the suit is decided) and restraint from doing certain actions (e. g. you are not to sell certain property or to plough a certain field till the disposal of the suit)[396]. The rules about āsedha are laid down by Nār. (I. 47–54), Br. (q. by V. P. p. 42, Sm. C. II. pp. 30–31), Kāt. 103–110 (all quoted by V. P. pp. 41–42, Sm. C. II. pp. 30–31). Nār. (I. 54) states that those persons whose personal appearance is dispensed with as stated above are not to be subjected to āsedha. Nārada provides that he who disregards the prohibitory order (āsedha) of the court should be punished and that he who obtains a restraint order against a person that should not have been thus proceeded against should also be punished. Acc. to Kāt. that man who restrains the defendant so as to prevent him from exercising his limbs or from talking or breathing freely should be punished and not the defendant if he breaks such restraint. A defendant would not be liable to be fined, if he disregards a restraint order which ties him down to a river ford, or to a forest, to a bad place (infested by thieves and tigers) or at the time of an invasion (Nār. I. 49). There is a provision which looks like one for the appointment of a Receiver in modern times. Kāt. (120) says 'A king should not allow a litigant to proceed if the litigant retains the property or money which he has (been shown to have) seized; it should be delivered over to the opposing litigant (if he be trustworthy) or it may be kept with a third person (as receiver for the successful party)[397]. When the defendant comes on being summoned, he and the plaintiff are both to be placed before the judges (Pitāmaha q. in Sm. C. II. p. 34). Then a surety is to be taken from both who would be capable of carrying

396. It should be noted that these provisions about *āsedha* are analogous to those about attachment or arrest before judgment (section 94 and Order 38 of the Indian Civil Pro. Code of 1908) and temporary injunction (Order 39 of the same).

397. गृहीतग्रहणो न्यायो न प्रवर्त्यो महीभुजा। तस्य वा तत्समर्थं स्यात्स्थाप्यं वापि परस्य तत्। कात्या. q. in स्मृतिच. II. 5. 35, विवादचन्द्र p. 94, which explains 'अर्थिना प्रत्यर्थिसकाशाद्यो विवादपदमानीयते तदा यावत्प्रत्यर्थिनि मध्यस्थे वा न समर्प्यते तावद्विवादो न प्रवर्त्यः। गृहीत०। गृह्यते इति ग्रहणं विवादपदं तद्गृहीतं यत्र स गृहीतग्रहणः। तस्य प्रत्यर्थिनः कृते (हस्ते ?) तत्समर्थं परस्य मध्यस्थस्य स्थाने वा स्थाप्यमित्यर्थः'

out the decree made by the court i. e. who would be able to pay the amount of fine to the king if the defendant denied the plaintiff's claim or who would be able to pay double the amount of the claim if the plaintiff's claim be found to be false (Yāj. II. 10–11). If any one of the parties cannot offer a surety, then he has to be kept in the custody of the court's bailiff (sādhyapāla) and has to pay the daily wages of the bailiff at the end of every[398] day (Kāt. 117 q. by Mit. on Yāj. II. 10). The following persons could not be accepted as sureties (Kāt. 114–116 q. by Mit. on Yāj. II. 57): 'the master (in the case of a party being a servant), an enemy, one authorised by the master, one arrested, one fined, one accused of grave sins or offences, one who is a co-sharer in family property, a friend, one who is a perpetual student, one who is appointed to do the king's business, ascetics, one who would not be able to pay the amount decreed and the fine to the king, one whose father is living, one who incites the party for whom surety is demanded, one whose antecedents are unknown.' When a person (of any caste) is kept guarded for want of a surety he is not to be prevented from doing necessary and obligatory acts (bath, *sandhyā* worship &c.) and if he runs away from the guard he should be fined eight paṇas (Kāt. 119 q. in Par. M. III. 58).

When the defendant comes before the court, the information at first given by the plaintiff is to be written down accurately in his presence together with the year, month, fortnight, day, names (of parties), caste &c. (Yāj. II. 6). When the aggrieved party first comes to the court, all that is taken down is the matter in dispute (i. e. the draft of the plaint); when the defendant comes, the plaint is written down with all details (including the grievance as stated in the beginning).[399] The plaint is called by various names in Sanskrit viz. *pakṣa*, *bhāṣā*, *pratijñā* (Mit. on Yāj. II. 6). Sometimes the word 'pūrvapakṣa' is used for pakṣa (as in Kāt. 131, Nār. II. 1). *Vādin* and *prativādin* generally mean the plaintiff and the defendant, though vādin sometimes means 'a litigant' (either the plaintiff or defendant). '*Arthin*' (one who seeks the assistance of the court) and *abhiyoktṛ* (attacker) are synonyms of *vādin*, and *pratyarthin* and *abhiyukta* (attacked) are synonyms of *prativādin*. Kāt.

398. अथ चेत्प्रतिभूर्नास्ति कार्ययोग्यस्तु वादिनः । स रक्षितो दिनस्यान्ते दद्याद्भृत्याय वेतनम् ॥ कात्या. quoted by मिता. on या. II. 10 and V. P. p. 44.

399. आवेदनसमये कार्यमात्रं लिखितं प्रत्यर्थिनोऽग्रतः समामासादिविशिष्टं लिख्यते इति विशेषः । भाषा प्रतिज्ञा पक्ष इति नार्थान्तरम् । मिता. on या. II. 6.

(130–131) says that the judge[400] should have the plaint written down on a board (or on the ground) with a piece of chalk as narrated naturally by the claimant and then on a leaf (palm leaf or bark or paper) when it is corrected (after the defendant appears) and that the plaintiff may delete some matters from the original (draft of) plaint and may fill in gaps and that such amendments may be made in the draft till the plaint is finally settled.[401] It appears from the Vyavahāratattva (p. 205) that the pleadings (the plaint and the reply) could be written down in Sanskrit or in the vernacular of the parties if they were ignorant. The Mṛcchakaṭika (Act IX) shows how the presiding judge asks the śreṣṭhin and kāyastha to write down the words 'not by me' as the complaint of the Śakāra when the latter averred that Vasantasenā was killed by Cārudatta and not by himself. The plaint could be amended till the filing of the reply[402] (Nār. II. 7). Elaborate rules are laid down about the contents of the plaint by many writers from Kauṭilya (III. 1) downwards. Kauṭ.[403] states that in the plaint should be entered the year, season, month, fortnight, day, the documents (to be relied upon), the court (in which the plaint is lodged), the (amount of) debt (or other money due) and the country, village, caste, family, names and occupations of the plaintiff and defendant together with the relationship in which they stood to each other. Kāt. (127–128 q. by Mit. on Yāj. II. 6 and Aparārka p. 608) requires that in suits about immoveable property, ten details should be recorded in the plaint viz. the country, the place (town or village in which the property is situated), situation (boundaries or the figure such as a square &c.), the caste (of both parties), names,

400. अधिकान् शोधयेदर्थानन्यांश्च प्रतिपूरयेत् । भूमौ निवेशयेत्तावद्यावत् पक्षः प्रतिष्ठितः ॥ पूर्वपक्षं स्वभावोक्तं प्राड्विवाकोऽभिलेखयेत् । पाण्डुलेखेन फलके ततः पत्रे विशोधितम्॥ कात्या. q. the first by विश्वरूप on या. II. 6, the 2nd. by मिता० on या. II. 6 and both by अपरार्क p. 611, परा. मा. III. pp. 65–67.

401. शोधयेत्पूर्ववादं तु यावन्नोत्तरदर्शनम् । अवष्टब्धस्योत्तरेण निवृत्तं शोधनं भवेत् ॥ नारद q. by मिता० on या. II. 6; एतच्च संस्कृतदेशभाषान्यतरेण यथाबोधं वक्तव्यं लेख्यं वा । मूर्खाणामपि वादिप्रतिवादितादर्शनात् । अत एवाध्यापनेपि तथोक्तं विष्णुधर्मोत्तरे । संस्कृतैः प्राकृतैर्वाक्यैर्यः शिष्यमनुरूपतः । देशभाषाद्युपायैश्च बोधयेत्स गुरुः स्मृतः ॥ व्यवहारतत्त्व p. 205.

402. Under the Civil Pro. Code, Order VI. r. 17 (Act V of 1908) the plaint may be allowed to be amended at any stage of the suit. The ancient Indian rule was somewhat stricter.

403. संवत्सरमृतुं मासं पक्षं दिवसं करणमधिकरणमृणं वेदकावेदकयोः कृतसमर्थावस्थयोर्देशग्रामजातिगोत्रनामकर्माणि चाभिलिख्य वादिप्रतिवादिप्रश्नानर्थानुपूर्व्यां निवेशयेत् । अर्थशास्त्र III. 1.

the dwelling place (of the parties), the measure (so many *nivartanas* &c.), the name of the field, (names of) the father, grandfather and great-grand-father, mention of the former kings. Kāt. 124–126, Bṛ. (q. in Sm. C. p. 36 and V. M. p. 294) give further details, which are passed over for want of space. All the details enumerated above need not occur in every plaint, but the necessary ones must be stated according to the facts of each case[404].

These rules about the contents of plaints are very similar to those in the Indian Civil Pro. Code, Order VII rules 1–5.

In modern India no suit or appeal can be filed unless the plaintiff or appellant pays substantial court-fees (Rs. 7½ per cent upto Rs. 1000 and 5 per cent for higher claims up to 5000 and so on at reduced rates as the claim rises). It is interesting to see how the litigants in ancient India fared in this respect. It appears that in disputes of a criminal nature no court fees had to be paid in ancient India. The person found guilty had to pay to the king the fine declared in the Smṛtis for offences or awarded by the Court. As regards civil disputes also nothing had to be paid at the inception of the suit. Certain rules are prescribed by Kauṭ. (III. 1), Yāj., Viṣṇudharmasūtra, Nār. and others about payments to the king after the suit is decided, which payments may be regarded as in the nature of court fees. Yāj. II. 42 and Viṣṇudharmasūtra VI. 20–21 state that in the case of suits for the recovery of debts the debtor who admitted that he was a debtor (but did not pay the creditor) should be made to pay to the king 10 per cent on the amount decreed and the successful creditor should pay five per cent out of the amount decreed (as *bhṛti*, compensation or court fee)[405]. When the debtor denies the fact of debt altogether and the creditor succeeds in establishing it, the debtor had to pay the amount decreed to the creditor and an equal amount to the king as fine; but if the plaintiff turns out to be a false claimant (i. e. the relationship and the amount of the debt are not proved) he had to pay to the king as fine twice as much as the amount claimed by him (Yāj. II. 11). Nār. also (IV. 132) says[406] that a debtor, who is able to repay a debt but does not

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404. एषां मध्ये यानि साधकबाधकप्रमाणोपन्यासोपयोगीनि यत्र भवन्ति तत्र तान्येव लेख्यानि न सर्वाणि प्रयोजनाभावात्। अपरार्क. p. 608.

405. उत्तमर्णश्चेद्राजानमियात्तद्विभावितोऽधमर्णो राज्ञे धनदशभागसंमितं दण्डं दद्यात् प्राप्तार्थश्चोत्तमर्णो विंशतितममंशम्। विष्णुधर्मसूत्र VI. 20–21.

406. ऋणिकः सधनो यस्तु दौरात्म्यान्न प्रयच्छति। राज्ञा दापयितव्यः स्याद् गृहीत्वा पञ्चकं शतम्॥ नारद IV. 132. The व्य. मयूख p. 182 reads गृहीत्वांशं तु विंशकम् (i. e. 20 per cent).

do so through wickedness or malice, should be made to pay the debt after recovering five per cent from the debtor. The Sm. C. II. p. 121 says that this applies to a case where the debtor admits his liability to the plaintiff. Manu VIII. 139 gives milder rules: 'if a debtor admits before the Court that he is a debtor, then he has to pay a fine equal to five per cent on the amount decreed, but if he denied the fact of debt altogether, then he has to pay as fine ten per cent'. Manu VIII. 59 which prescribes a fine twice of that amount which the debtor falsely denies or which the creditor falsely claims contains a somewhat different rule (which Medhātithi says applies where parties are guilty of downright fraud, while VIII. 139 applies where there is negligence or loss of memory &c.). In suits other than for debts such fines are also prescribed e. g. in Yāj. II. 26 for one who misappropriates a pledge, II. 33, II. 188 (for breach of the rules of guilds and other groups), Yāj. II. 171 (where a person claiming to be the owner of lost goods and failing to prove his ownership of them was fined *pañca-bandha* i. e. a fifth part of the price of the goods). Kauṭ. prescribes[407] that when a party is guilty of contradictory pleadings, or does not cite witnesses though saying he has witnesses and is defeated for these and similar reasons he has to pay a fine of 20 per cent of the claim and 10 per cent only if he relied on his own deposition (and called no witnesses) and further the defeated party has to pay the costs viz. the wages of the bailiff and of the subsistence allowance of witnesses. Therefore it may be said that in ancient times Indian litigants had an easy time, while in modern times litigation is often ruinous, what with the heavy court fees to be paid in several courts, the fees of legal practitioners and the expenses of witnesses and the delay of years[408]. The remark of Dr. Hart (in 'Way to justice' p. 17) is as applicable to modern India as to England 'the plain truth is that the justice of the courts is unattainable by some citizens through want of the necessary financial resources; while in the case

407. परोक्तदण्डः पञ्चबन्धः स्वयंवादिदण्डो दशबन्धः । पुरुषभृतिरष्टाङ्गः । पथि-भक्तमर्थविशेषतः । तदुभयं नियम्यो दद्यात् । अर्थशास्त्र III. 1.

408. In modern times a plaint or memorandum of appeal is to be rejected if not properly stamped. Vide Order VII. r. 11 of the Indian Civil Pro. Code. The Peshva's Government appears to have taken one-fourth or one-fifth from the party whose claim for partition or for recovery of debt succeeded. Vide 'Peshwa's Diaries' ed. by Rao Bahadur Wad, vol. 2 pp. 132, 146, 163.

of many others it is not worth having at the cost which it involves'.

In one of his most famous soliloquies Shakespeare (in Hamlet III. 1 'Oppressor's wrong, the proud mans's contumely, the pangs of despised love, the *law's delays*') enumerates law's delays among the principal evils of human life. In modern India as in England[409] before 1873 delay in the decision of causes is a crying evil. In the rough and ready methods of administering justice in ancient India care seems to have been bestowed on disposing of cases as quickly as possible. The story of king Nṛga who caused delay has already been referred to (p. 243). Kauṭ. (III. 1) states that if the plaintiff, after the defendant files his answer, does not on the same day begin to support his case (by evidence) he would be declared to be defeated, since the plaintiff comes to court after determining the strength of his case, but the defendant does not do so (he is dragged to the court); that the defendant may be allowed an adjournment of three or seven days for his defence; if he is not ready with his defence within that time he may be punished with a fine ranging from 3 to 12 paṇas; if he does not answer even after three fortnights he shall be punished with fine for *parokta* (viz. *pañcabandha* or *daśabandha* as stated above in note 407) and the plaintiff's claim would be recovered from the property of the defendant. A similar rule is laid down in Manu VIII. 58. Yāj. II. 12 prescribes that disputes relating to *sāhasa* (killing by poison or weapon), theft, abuse, assault, cows, charges of grave sins and women (about the chastity of all women and about ownership in the case of female slaves), the defendant has to make his defence at once, and that in other cases time may be granted at the discretion of the court. Nār. I. 45 is to the same effect. Nār. I. 44 holds that adjournments may be granted in suits about debts and the like for finding out the truth as such disputes are complicated and as memory is weak. Pitāmaha (q. in Sm. C. II. p. 42) says that adjournments may be granted in disputes about deposits, sealed deposits, gifts, partnerships, transgression of conventions and partition of heritage. Gautama XIII. 28 speaks in general terms of an adjournment for one year, when the defendant does not remember the transaction, but prescribes immediate trial in

409. For the enormous delay in the disposal of even simple proceedings or Bills in Chancery in England, vide Holdsworth's 'History of English Law' (1926) Vol. IX. pp. 374-375 and 433-435.

disputes about kine, women and children or when the matter is urgent i. e. where loss or abandonment of the thing will be the result of delay (Gaut. XIII. 29–30). Bṛhaspati allows time even to the plaintiff if he is not able to put forward his case owing to his immaturity or lack of boldness.[410] Kāt. (145–158 quoted by Aparārka p. 619, Sm. C. II. p. 42, Par. M. III. pp. 69–72) contains elaborate rules about adjournments. He says that according to the importance or otherwise of the dispute, one, three, five, or seven days may be allowed to the defendant to make his defence in disputes about debts, according as the debt was contracted three months ago or 6, 12, 20 or 30 years ago; that even more than a year may be allowed if the defendant is an idiot or lunatic or is suffering from disease or if the subject of dispute or the witnesses are in a foreign country; that more adjournments than one may be granted in such cases; that according to Bṛhaspati in disputes about immoveable property also no adjournments should be granted; that if the act of God (*daiva*) or the king prevents the defendant from making his defence he should not be declared defeated, but time should be granted to him to prove this. It is clear that with the advance of time adjournments became longer and more frequent in Kāt. compared with the rigid rules of Kauṭ.. Kāt. and Śukra (IV. 5. 167, 209) contain the last word on this point. According to them delay in deciding causes is tantamount[411] to denial of justice (*dharmavyāpatti*, lit. death of Justice).

The sequence of stages in a law-suit is as follows: first the plaintiff makes his averments, then the defendant makes his reply; when both have finished, the members of the court speak (or deliberate among themselves) and after them (speaks) the judge (Kāt. 121 q. by Aparārka p. 611, Par. M. III. p. 58). The four stages (*pādas*) of a law-suit, acc. to Yāj. II. 6–8, and

410. ऋणोपनिधिनिक्षेपदानसंभूयकर्मणाम् । समये दायभागे च कालः कार्यः प्रयत्नतः ॥ पितामह q. in स्मृतिच० II. p. 42; अभियोक्ताऽप्रगल्भत्वाद् वक्तुं नोत्सहते यदि । तस्य कालः प्रदातव्यः कार्यशक्त्यनुरूपतः ॥ बृहस्पति q. in स्मृतिच० II. p. 40, अपरार्क p. 611.

411. न कालहरणं कार्यं राज्ञा साधनदर्शने । महान् दोषो भवेत्कालाद् धर्मव्यापत्तिलक्षणः ॥ यथादेशानुरूपं तु कालं साधनदर्शने । उपाधिं वा समीक्ष्यैव दैवराजकृतं सदा ॥ शुक्र IV. 5. 167 and 209. The first is almost the same as Kāt. 339 (q. in स्मृतिच० II. p. 92, व्य. मा. p. 306, स. वि. p. 148, which read साक्षिभाषणे and धर्मव्याहृति०)

Bṛ. are named[412] *bhāṣāpāda* (the plaint), *uttarapāda* (the reply), *kriyāpāda* (the adducing of evidence), *sādhyasiddhi*[413] or *nirṇaya* (the decision); while Kāt. 31 states them as pūrvapakṣa, uttara, pratyākalita and kriyā. Pratyākalita means 'discussion or consideration among the *sabhyas* about the burden of proof' (vide p. 260 n. 337). If several persons come simultaneously with complaints or plaints, then the order of taking up the cases is regulated by the *varṇa* of the plaintiffs i. e. the suit of a brāhmaṇa is first taken up (Manu VIII. 24). Kauṭ. I. 19 states[414] that the causes of temples (or idols), ascetics, heretics, brāhmaṇas learned in the vedas, about cattle and sacred places, of minors, of the aged, of those afflicted with disease or misfortunes, of the helpless and of women are to be looked into in the order enumerated or according to the importance of the causes or their urgency. Kāt. (122 q. in Sm. C. II. p. 35, Par. M. III. p. 59) says that preference should be given to that litigant whose injury is greater or whose cause is more important than those of the rest. Kauṭ. III. 20 went[415] so far as to say that judges should look into the causes of idols (or temples), brāhmaṇas, persons performing austerities, women, minors, the old, the diseased, the helpless, even if they did not come forward to complain nor should judges put forward the excuses of time (i. e. the long delay in taking cognisance of their causes), place, or (long) enjoyment (of their opponents).

Lengthy quotations and illustrations are cited in the commentaries and digests about the requirements of a good plaint. They are all passed over. They well illustrate the *penchant* of ancient Indian writers for divisions, sub-divisions and subtle distinctions.

Kāt. (136 quoted by Aparārka p. 609) specifies several reasons which make a plaint unacceptable viz. one that lacks

412. पूर्वपक्षः स्मृतः पादो द्वितीयस्तूत्तरस्तथा । क्रियापादस्तथा चान्यश्चतुर्थो निर्णयस्तथा ॥ बृह० q. by अपरार्क p. 616; पूर्वपक्षश्चोत्तरं च प्रत्याकलितमेव च । क्रियापादश्च तेनायं चतुष्पात्समुदाहृतः ॥ कात्या. q. by अपरार्क p. 616. V. P. p. 44 quotes a verse of Bṛ., where प्रत्याकलित is the 4th पाद.

413. अत्र च सिद्धिशब्देन सभ्यानामर्थिप्रत्यर्थिविषयजयपराजयावधारणोपायभूतं प्रमाणमस्येदं शास्त्रतः प्राप्नोतीति विचारकाणां परामर्शः प्रत्याकलितादिशब्दवाच्य उच्यते सिद्धिफलत्वात् । अपरार्क p. 616.

414. तस्माद्देवताश्रमपाषण्डश्रोत्रियपशुपुण्यस्थानानां बालवृद्धव्याधितव्यसन्यनाथानां स्त्रीणां च क्रमेण कार्याणि पश्येत् । कार्यगौरवादात्ययिकवशेन वा । अर्थशास्त्र I. 19.

415. देवब्राह्मणतपस्विस्त्रीबालवृद्धव्याधितानामनाथानामनभिसरतां धर्मस्थाः कार्याणि कुर्युः । न च देशकालभोगच्छलेनातिहरेयुः । अर्थशास्त्र III. 20.

the mention of the time and place (of the cause of action), that omits the statement of the material (*dravya*, which is the subject of dispute) or the amount thereof and that is wanting in (stating) the extent of the relief claimed, that is opposed (to the interests or usages) of the country, that is prohibited by the king's order, that mixes up several vyavahārapadas.[416] Certain plaints are declared to be vitiated (*pakṣābhāsa*)[417] and not entertainable viz. a plaint that contains an unknown (or imaginary) grievance, that discloses no injury, that contains letters or words making no coherent sense, that states no cause of action, that is incapable of proof or is self-contradictory (Kāt. 140 q. by Mit. on Yāj. II. 6, Par. M. III. 61). Nār. II. 8 also points out the faults (*doṣas*) of a plaint and explains them (II. 9-14). Bṛhaspati states that there is to be no law-suit between teacher and pupil, father and son, husband and wife, and master and servant. This does not mean that law-suits between these pairs are altogether prohibited but that suits between them are undesirable, that the king or judges should persuade them to desist from proceeding in Court, that if they persist the court has to decide the suits according to the śāstra.[418] Manu (VIII. 299-300) prescribing the same punishment as for a thief in cases where a wife, son, slave, servant or brother is beaten for correction more severely than is allowed in the śāstras by the husband, father, master, or elder brother respectively conveys by implication that a legal proceeding by these is possible. The smṛtis did not encourage disputes based on

416. If a plaintiff states ' the defendant stole my gold. I deposited a thousand *drammas* with him which he does not return, he sold a cow to me without being its owner ', there is a joinder of three vyavahārapadas viz. *steya*, *nikṣepa*, *asvāmivikraya*. This is not a bad or altogether unacceptable plaint. All that is meant is that the trial of all these cannot be carried on simultaneously, but one after another.

417. अप्रसिद्धं निराबाधं निरर्थं निष्प्रयोजनम् । असाध्यं वा विरुद्धं वा पक्षाभासं विवर्जयेत् ॥ कात्यायन quoted by मिता. on या. II. 6 (without name), परा. मा. III. 61. The स्मृतिच० II. 37 ascribes the same verse to बृहस्पति (last pāda being पक्षं राजा विवर्जयेत्). Vide my notes to Kāt. 140 where it is shown how there is a good deal of divergence about the interpretation of this verse.

418. गुरुशिष्यौ पितापुत्रौ दम्पती स्वामिभृत्यकौ । एतेषां समवेतानां व्यवहारो न विद्यते । नारद acc. to विश्वरूप on याज्ञ. II. 5. and बृह. acc. to मदनरत्न and व्य. प्र. p. 34. The latter remarks ' तस्मादिदं वचनं गुर्वादीनां शिष्यादिभिः सह व्यवहारकरणे लोकद्वये न श्रेय इह निन्द्यावहत्वादमुत्र नरकजनकत्वादित्येतत्परमेव । राजादिभिस्तु न्यायप्राप्तो व्यवहारो लोकद्वयहानिकरत्वादिति निवार्यमाणा अपि शिष्यादयो न परितुष्यन्ति चेत्तदा तेषां यथाशास्त्रं निर्णयकरणमदोष एव ।'; vide also मिता. on या II. 32 for similar words.

flimsy or trumpery grounds. Bṛhaspati[419] says that a plaint that is *nirarthaka* (i. e. the injury in which is very small or the monetary value involved is negligible) should not be entertained by the king. This is on the principle of *de minimis non curat lex* (the law does not take account of trifles) also embodied in sec. 95 of the Indian Penal Code.

When the plaint has been finally settled, the defendant should be called on to reply in writing to the plaint in the presence of the plaintiff (Yāj. II. 7, Nār. II. 2). This is called *uttara* (reply) or *pratipakṣa* (Nār. II. 2). When time may be given to the defendant for putting in his answer has already been stated above.

The answer of the defendant must possess the following characteristics viz. it must completely meet all the points of the plaint, it must not deviate from the truth, must not employ vague words, must not be self-contradictory, it should not be such as to require further explanation (because of containing words in a foreign tongue or unknown or rarely used words or elliptical or badly arranged sentences).[420] A reply is of four kinds, (1) *mithyā* (of denial), *sampratipatti* or *satya* (confession or admission), *kāraṇa* or *pratyavaskandana* (of special plea or demurrer), *prāṅnyāya* or *pūrvanyāya* (of former judgment or *res judicata*). A reply of denial may take four forms (Nār. II. 5) viz. (1) this (what is affirmed in the plaint) is false, I do not know anything about it, I was not present (when the transaction alleged in the plaint is said to have taken place), I was then not born.[421] The first is a direct denial, the others are implied or indirect. Very strict rules of pleading were evolved by the

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419. स्वल्पापराधः स्वल्पार्थो निरर्थक इति स्मृतः । बृहस्पति q. in स. वि. p. 87 and स्मृतिच० II. p. 37, which explains तत्र निरर्थकस्योदाहरणम् । अहमनेन सस्मितं निरीक्षितः मामकी लाक्षानेनापहृता इति वा ।

420. पक्षस्य व्यापकं सारमसन्दिग्धमनाकुलम् । अव्याख्यागम्यमित्येतदुत्तरं तद्विदो विदुः ॥ quoted by मिता. on या. II. 7, अपरार्क p. 612 (ascribes to नारद), स्मृतिच० II. p. 42 (ascribes to प्रजापति), शुक्र IV. 5. 139.

421. मिथ्या संप्रतिपत्तिर्वा प्रत्यवस्कन्दमेव वा । प्राङ्न्यायविधिसाध्यं वा उत्तरं स्याच्चतुर्विधम् ॥ नारद II. 2; कात्यायन has सत्यं मिथ्योत्तरं चैव प्रत्यवस्कन्दनं तथा । पूर्वन्यायविधिश्चैवमुत्तरं स्याच्चतुर्विधम् ॥ q. in. मिता. on या. II. 7. The same is शुक्र IV. 5. 144. एतद्वृनाधर्यमिति कैश्चिदुच्यते । वृद्धकात्यायनः-व्यपेता तु क्रिया यत्र ह्यभियुक्तेन कीर्तिता । आधर्यं तद्विजानीयात्पूर्वपक्षस्य नान्यथा ॥ व्यव. नि. p. 51 and व्य. मा. p. 307 (reads वाचिका तु क्रिया). आधर्य is probably derived from अधर (meaning 'lower', 'weak' or 'inferior'). The व्य. मा. reads आधार्य, which appears to be a wrong reading.

time of Kāt., who provides (144) that if a statement asserted by the plaintiff in the hearing of the defendant is not traversed by the latter or if the latter remains silent when he should have given a reply, it (should be held by the court that it) is admitted (by the defendant).[422] When the defendant declares the truth of the claim made in the plaint that is a reply of admission. Where the defendant accepting as correct the matters (or facts) set out by the plaintiff raises a plea, that is a reply of special plea.[423] The same is designed by some as *ādhārya* or *ādharya* (rendering futile) of the plaint. For example, where plaintiff avers that defendant took one hundred rupees and defendant accepts that fact but adds either that he later on returned them or that they were really donated to him, that is a reply of special plea. Where a person though defeated in a (former) proceeding again causes a plaint to be written and is addressed (answered) with the words 'you were formerly defeated', that is a reply of former judgment. That there was a former judgment between the same parties may be proved by citing the judges or arbitrators or by citing other witnesses or by producing the writing itself i. e. the copy of the judgment (Kāt. 172).[424] In a reply of admission there are only two stages of *vyavahāra* viz. the plaint and the reply; there is no need of proof (so there is no *kriyāpāda*) and the plaintiff succeeds as a matter of course (and so there is no necessity of a regular judgment, *nirṇaya*). Kāt. (173–190) states at great length the faults of a reply and also what are not proper replies. The Mit. (on Yāj. II. 7), Aparārka pp. 613–614, Sm. C. II. pp. 43–46 and

422. श्राव्यमाणोऽर्थिना यत्र यो ह्यर्थो न विघातितः । दानकालेऽथवा तूष्णीं स्थितः सोऽर्थोऽनुमोदितः ॥ कात्या. q. by कृत्यकल्पतरु. Compare Order VIII rule 5 of the Civil Pro. Code.

423. अर्थिना लेखितो योऽर्थः प्रत्यर्थी यदि तं तथा । प्रपद्य कारणं ब्रूयात्प्रत्यवस्कन्दनं स्मृतम् ॥ शुक्र IV. 5. 148, नारद q. by मिता. on या. II. 7; vide कात्यायन 170, q. by व्य. मा. p. 307 (reads योऽर्थिनार्थः समुद्दिष्टः), व्य. प्र. p. 59 (which reads आधर्यं भृगुरब्रवीत् as the last *pāda*).

424. विभावयामि कुलिकैः साक्षिभिर्लिखितेन वा । जितश्चैव मयायं प्राक्प्राङ्न्यायविधकारकः ॥ कात्यायन q. by स्मृतिच० II. p. 43 which explains 'कुलिकैरिति प्रकृतव्यवहारद्रष्टृणामुपलक्षणार्थम्', व्य. प्र. p. 61. The व्यव. नि. (p. 53) has the following note on this 'ऐन्द्रस्थाने जितस्य प्राङ्न्यायविधिसिद्धौ जयपत्रेणाहं भावयामीत्येकः कुलव्यवहारे च जयपत्राभावात्–कुल्याः कुलविवादेषु विज्ञेयास्तेपि साक्षिणः—इति वचनात् तैरेव व्यवहारदर्शिभिर्भावयामीति द्वितीयः । राज्ञा धर्मासनस्थेन यच्छ्रुतं तत्त्वदर्शिना । नान्यः साक्षी भवेत्तत्र मुक्त्वा राजानमीश्वरम् ॥—इति वचनात् साक्ष्यभावात्तेन राज्ञा भावयामीति तृतीयः ॥'

other digests quote long passages from Kāt., Bṛ., Hārīta, Vyāsa and others on faults of *uttara* and illustrate them at length. These have to be omitted for want of space. One of the faults is '*saṅkara*' (mixture or confusion or misjoinder of pleas in defence). For example, if the plaint alleges 'the defendant took gold, a hundred rupees, certain valuable clothes and a quantity of corn and has not returned any of them, ' and the defendant's reply is 'I took the gold, I never took any rupees, the plaintiff donated the clothes to me, as to the corn plaintiff had already filed a suit against me and failed '. Here the reply contains all four varieties, viz. the first is a reply of admission, the 2nd is one of denial, the third is a special plea and the 4th is a plea of former judgment. This is a *saṅkara*. But it is not meant that this reply would not be allowed. All that is meant is that, as the burden of proof varies, the adducing of evidence will not be allowed simultaneously, but one after another. Vide Mit. on Yāj. II. 7, Par. M. III. pp. 77–80. These questions are concerned with cases in which several issues arise, the burden of proving some of which lies on the plaintiff and the burden of proving others lies on the defendant. If a defendant does not come forward to give a reply, the king or judge should make him give one by *sāma* (conciliatory words), *bheda* (threats) and other ways and if he does not give a reply for seven days after that, he may be declared to have been defeated and a decree may be passed against[425] him. Kauṭ. (III. 1), Yāj. II. 9, Nār. I. 55, Kāt. (163) state that a defendant cannot[426] raise a counter-claim (*pratyabhiyoga*) as long as he has not met the attack of the plaintiff, nor should another plaintiff attack a person who is a defendant in a suit already filed, except in the case of abuse and assault, *sāhasa* (death or grievous hurt by a weapon &c.), theft or in a very urgent matter, or in disputes among members of caravans or guilds or in charges of adultery, Yāj. II. 29, Nār. IV. 93, Śukra IV. 5. 120 say that when a litigant dies while a suit is pending, his son (or other representative) who takes his estate should carry on the litigation or be liable for the claim and the son cannot add his own enjoyment (to make up

425. उपायैश्चोद्यमानस्तु न दद्यादुत्तरं तु यः । अतिक्रान्ते सप्तरात्रे जितोऽसौ दातुमर्हति ॥ वसिष्ठ q. in स्मृतिच॰ II. p. 46, परा. मा. III. p. 81, व्य. प्र. p. 56 (reads उपैश्चोद्य॰ and दण्डमर्हति). This is हारीत acc. to स. वि. p. 99.

426. अभियुक्तो न प्रत्यभियुञ्जीत अन्यत्र कलहसाहससार्थसमवायेभ्यः । न चाभियुक्तेऽभियोगोऽस्ति । अर्थशास्त्र III. 1 ; अभियुक्तोऽभियोक्तारमभियुञ्जीत कर्हिचित् । अन्यत्र दण्डपारुष्यस्तेयसंग्रहणात्ययात् ॥ कात्या. q. by व्य. मा. p. 299; should we not read नाभियुक्तो or नाभियुञ्जीत ?

three generations &c. as required for possession ripening into ownership).[427]

There were many grounds on account of which a litigant became what is called *hīna* (a losing party) and some times either had his plaint dismissed or his defence struck out and a decree passed against him or he was simply fined. For example, Nār. II. 33 speaks of five kinds[428] of *hīna* viz. one who changes his statements (or pleading), who does not prosecute his pleading by adducing evidence (i. e. avoids investigation), who does not appear when summoned, who gives no reply, who disappears or runs away when summoned. Nār. I. 56–61, II. 24 explain some of these and other *hīna* parties. Kāt. 202 (q. by Sm. C. II. p. 47) prescribes that the above five should respectively be fined 5, 10 12, 16 and 20 paṇas. Nār. II. 25 states that in all civil disputes such as those about women, land or debts the litigant does not lose his cause even if he commits a mistake in his statements, but he is liable to fine. This conveys that in disputes arising out of wrath (manyukṛta i. e. in criminal matters) a person loses his cause if he is guilty of the above acts and he is prohibited from pursuing the matter again. Kauṭ. III. 1, Manu VIII. 53–57 contain in almost the same words, certain similar rules, Kauṭ. calling the several actions causes of *parokta* (defeat). Vide Yāj. II. 16, Śukra IV. 5. 136, Kāt. 191–210 for further details on dismissal for default and cognate matters. In these cases of *hīnavādins*, though a fine was imposed, a retrial could be ordered. When defendant filed his reply and parties joined issue in court, Bṛ. and Kāt. say that they should not then be allowed to compromise the dispute privately without the permission of the

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427. योऽभियुक्तः परेतः स्यात्तस्य रिक्थी तमुद्धरेत्। या. II. 29; प्रवर्तयित्वा वादं तु वादिनौ तु मृतौ यदि। तत्पुत्रो विवदेत्तज्ज्ञो ह्यन्यथा तु निवर्तयेत्॥ शुक्र IV. 5. 120.

428. अन्यवादी क्रियाद्वेषी नोपस्थाता निरुत्तरः। आहूतप्रपलायी च हीनः पञ्चविधः स्मृतः॥ नारद II. 33.

429. पूर्वोत्तरे संलिखिते विचारे संप्रवर्तिते। प्रशमं ये मिथो यान्ति दाप्यास्ते द्विगुणं दमम्॥ ... साक्षिसभ्यविकल्पस्तु भवेत्तत्रोभयोरपि। दोलायमानौ यौ सन्धिं कुर्यातां तौ विचक्षणौ॥ प्रमाणसमता यत्र भेदः शास्त्रचरित्रयोः। तत्र राजाज्ञया सन्धिरुभयोरपि शस्यते॥ बृह. q. by स्मृतिच॰ II. p. 49, स. वि. 104, परा. मा. III. pp. 84–85, व्य. प्र. p. 77; आवेद्य प्रगृहीतार्थं प्रशमं यान्ति ये मिथः। सर्वे द्विगुणदण्ड्याः स्युर्विप्रलम्भान्नृपस्य तु॥ कात्या. 210, q. by स्मृतिच॰ II. p. 49, परा. मा. III. p. 84, व्य. प्र. p. 77. the व्य. प्र. says (p. 77) 'द्विगुणो दण्डस्तु पराजयनिमित्तदण्डापेक्षया न तु विवादास्पदीभूतद्रव्यापेक्षया। अद्रव्यविवादेष्वव्याप्तेः। Vide S. B. E. vol. 33 pp. 295–296 verses 10–12 for Bṛ. (Dr. Jolly's tr. of verse 10 is not correct). Compare Order 23 r. 3. of the Indian Civil Pro. Code and sec. 345 of the Criminal Pro. Code for compounding offences).

court; if they did so they were both to pay double of the fine imposed on a defeated party, as they deprived the king of his dues (court fees). But a compromise with the court's permission was allowed when the parties were in doubt as to what the witnesses might say or the *sabhyas* might decide (in such cases it would be wisdom for the parties to compromise) and particularly when the evidence on both sides was evenly balanced or where there was a conflict between the different smṛtis and usages.

When the reply had been given the *sabhyas* had to consider the question about the burden of proof. Bṛ.[430] says 'the sabhyas after considering the nature of the reply should call upon one of the parties that are in court to establish his case' (Sm. C. II. p. 50). What a party sets out to establish is called *sādhya* and the means whereby the claim (of the litigant) in its entirety is established is called *sādhana* (Kāt. 213 in V. P. p. 79). Yāj. II. 7 and Nār. II. 27 say that the party (on whom the burden of proof lies) should immediately (after the reply is given) write down the means whereby he proposes to prove his averments. This third stage (pāda) is called *kriyā* i. e. proof. *Sādhya* and *kārya* are synonyms, *kriyā* and *sādhana* also are synonyms (Kāt. in Aparārka p. 616, Vyāsa in Sm. C. II. p. 54). The rules about burden of proof are laid down by Hārīta (q. in Mit. on Yāj. II. 7, Aparārka p. 616). In a reply of denial, the burden of proof is on the plaintiff, in a reply of former judgment or of a special plea, it is on the defendant and in a reply of admission no question of burden of proof arises. Compare also Nār. II. 31. The Mit. on Yāj. II. 80 states another rule that an affirmative proposition has to be proved by him who asserts it (*bhāvapratijñāvādina eva kriyā*). Yāj. II. 22, Nār. II. 28–29 and IV. 69, Bṛ. (in Sm. C. II. p. 54), and others say that means of proof are two-fold, human and divine, and that documents, witnesses and possession are the human means of proof (Vas. 16. 10 also), while the ordeals of balance and others are divine means. Yāj. II. 22, Nār. II. 29, Kāt. 217 expressly state that ordeals are to be resorted to only when none of the human means are possible or available. If one party relies on human means alone and the other offers divine means, the king (or judge) has to accept human means and not divine; in disputes among men, if there be human means of proof though reaching

430. ये तु तिष्ठन्ति करणे तेषां सभ्यैर्विभावना । कलयित्वोत्तरं सम्यग्ज्ञात्वैकस्य वादिनः ॥ बृह. in स्मृतिच० II. 50.

(or covering) only a portion (of the allegations in the plaint) then human means should be accepted and not divine ones even though the latter may cover the whole ground (Kāt. 218–219 q. by Mit. on Yāj. II. 22). This latter rule is based on the proposition laid down in Yāj. II. 20 and Viṣṇudharmasūtra VI. 22 that when a party totally denies a claim and the opponent establishes by evidence a substantial portion of it, the judge may pass a decree against the denying party for the whole of the claim. This is practically the same as the maxim ' omnia praesumuntur contra spoliatorem '.[431] Therefore the general rule was that the divine mode of proof was to be resorted to only in the absence of any human means of proof. Kāt. 229 (q. by Mit. on Yāj. II. 22, Aparārka p. 629) allows witnesses or ordeals when the dispute is started with reference to *sāhasa*, assault or abuse and causes that spring from force and Kāt. 230 (q. in Sm. C. II. p. 51) provides that, in the case of a person guilty of *sāhasa* perpetrated in secret, investigation has to be made by divine proof. Kāt. 225–228 (q. by Mit. on Yāj. II. 22, Aparārka p. 629, Sm. C. II. pp. 53–54) lay down certain rules about preference among the several means of proof : whatever are declared as the conventional usages of the associations of traders, of guilds (of artisans) and of groups (of brāhmaṇas), the means of proving them are documents and not ordeals nor witnesses ; enjoyment[431a] (or possession) alone is weightier in the case of the making and (the use of) doors and ways, as also in the case of water-courses and the like (i. e. in the case of easements) and not writing nor witnesses ; in the case of things promised to be given but not given, when a decision is to be given in disputes of servants with masters, in the matter of taking back a thing after it is sold or when a person having purchased a thing does not pay the price, in gambling and prize fighting–when in these matters disputes arise the means

431. Vide H. of Dh. vol. I. p. 204 and n. 367, where a half verse from the drama Vikramorvaśīya (IV. 17) is quoted containing the same proposition and it is shown that Nārada as quoted in V. M. p. 311 and Par. M. III. p. 203 contained the same half verse. The half verse is विभावितैकदेशेन देयं यदभियुज्यते. The maxim cited above is relied upon in *Ardeshir* v. *The Collector of Surat* 3 Bom. H. C. R. (A. C. J.) p. 116 and in *Framji* v. *The Commissioner of Customs* 7 Bom. H. C. R. (A. C. J.) p. 89.

431a. In *Lalubhai* v. *Bai Amrit* I. L. R. 2 Bom. 299 at p. 312 there is a reference to Kāt. 226 द्वारमार्गक्रियाभोगे जलवाहादिके तथा । भुक्तिरेव तु गुर्वी स्यान्न दिव्यं न च साक्षिणः ॥. There is a similar verse of Kāt. 314 (q. in स्मृतिच॰ II. p. 67) ' रथ्यानिर्गमनद्वारजलवाहादिसंश्रये । भुक्तिरेव तु गुर्वी स्यात्प्रमाणेष्विति निश्चयः ॥ '.

of proof are witnesses and not documents nor ordeals. Marīci (q. by Sm. C. II. 60, V. P. p. 141) states that as regards the sale, mortgage, gift or partition of immoveable property a document (should be executed as it) enables the person (in whose favour it is executed) to acquire (clear) title and freedom from doubt[432] (even after the lapse of years). It is in consonance with this that the Indian Legislature (in the Transfer of Property Act, IV of 1882) requires writing and registration as regards the sale, mortgage and gift of immoveable property. Nārada IV. 75 very concisely hits the special characteristics of each *pramāṇa*: ' a document is always strong, witnesses are strong (as evidence) only as long as they are alive, possession becomes strong as time passes '. The comparative strength of the several kinds of evidence is well put by Bṛhaspati[433]: ' Witnesses are superior to inference (circumstantial evidence), a document is superior to witnesses, undisturbed possession for three generations is superior to all these '. Kāt. 221 (q. by Mit. on Yāj. II. 80 and V. P. p. 80) gives the warning that when a litigant abandoning a strong ground or means of proof resorts to a weak one to prove his case, he would not be again entitled to rely on that (strong ground of proof) after the members of the court have decided as to who should succeed. This practically propounds the same rule as that of constructive *res judicata* contained in explanation 4 to section 11 of the Indian Civil Pro. Code (of 1908).

The means of proof will now be briefly dealt with in order. And first come documents. Those in search of an exhaustive treatment may usefully consult Dr. Amareshwar Thakur's ' Hindu Law of Evidence ' (Calcutta, 1933).

When writing was first employed in India and how the Indian Brāhmī alphabet was derived have been moot points for many decades among scholars. Max Müller's theory (' History of Ancient Sanskrit Literature ' p. 507) that the use of writing for literary purposes was unknown to Pāṇini was thoroughly exploded by Goldstückor in ' Pāṇini and his place in Sanskrit Literature ' and was later on abandoned by Max Müller himself.

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432. स्थावरे विक्रयाधाने विभागे दान एव च । लिखितेनाप्नुयात्सिद्धिमविसंवादमेव च ॥ मरीचि q. by स्मृतिच॰ II. p. 60.

433. अनुमानाद्गुरुः साक्षी साक्षिभ्यो लिखितं गुरु । अव्याहता त्रिपुरुषी भुक्तिरेभ्यो गरीयसी ॥ बृह. in व्य. मा. p. 350, व्यवहारतत्त्व p. 224 ; the same is कात्यायन (315) acc. to व्य. मा. p. 313. Probably कात्या. took over बृहस्पति's verse or there may be some mistake in quoting.

Then Bühler (in 'the Origin of the Indian Brāhmī alphabet') started the theory that Brāhmī was derived from a foreign Semitic script about 800 B. C. and this hypothesis held the field for a long time (vide e. g. Rhys Davids in 'Buddhist India' chapters VII and VIII). Even Western scholars are not now prepared to accept this dating of Bühler; vide Cambridge History of India, vol. I. p. 141 (1922). The excavations at Mohenjo-daro tend to throw grave doubts on this theory and discredit it. At Harappa and Mohenjo-daro there is writing (not satisfactorily deciphered yet) on burnt clay and pottery. The Piprahva vase shows writing on stone several centuries before the Christian era and the Sohagpur copperplate inscription is the earliest writing on copper plates yet discovered (vide Annals of B. O. R. Institute, Vol. XI. p. 32 ff). This is not the place to discuss the questions about the origin of the art of writing in India and of the Brāhmī script. It cannot be gainsaid that the most ancient dharmaśāstras refer to writing as well-known. Gaut. XIII. 4 appears to refer to a witness signing himself as such on a document. Vas. 16. 10, Viṣṇudharmasūtra VI. 23, Yāj. II. 22 mention *likhita* (document) as the first means of proof. Manu VIII. 51 uses the word *karaṇa* in the sense of document (*arthe pavyayamānam tu karaṇena vibhāvitam*), in VIII. 168 refers to documents obtained by coercion and in IX. 232 to fabricated royal edicts (kūṭaśāsana). Kauṭ. has a special chapter (II. 10) on royal writings (śāsana), in which he dilates upon the qualifications of the king's scribe, on the contents of an official document, the good points required in an official missive, on various divisions of writings and on the faults in official writings that are to be avoided. In I. 11 Kauṭ. prescribes that the king should hold consultations with absent ministers by sending a letter (*patra*, a leaf of palm or a piece of birch bark or similar material) and in I. 19 states that consultation by letter (*patra*) with the council of ministers should be held in the fifth part of the day. In II. 7 Kauṭ. advises the construction of rooms with shelves for books containing accounts (*akṣapaṭalam nibandhapustakasthānam kārayet*). Vide also Kauṭ. II. 21, II. 30, IV. 9, IV. 10 for references to writing in various other connections. Kauṭ. (III. 1) appears[434] to use the word *karaṇa* in the sense of document and gives a rule which is the same as Yāj. II. 23. Yāj. I. 319 speaks of land grants being written or

434. पश्चिमं त्वेषां करणमादेशाधिवर्जं श्रद्धेयम्। अर्थशास्त्र III. 1; compare या. II. 23 सर्वेष्वर्थविवादेषु बलवत्युत्तरा क्रिया। आधौ प्रतिग्रहे क्रीते पूर्वा तु बलवत्तरा॥.

engraved on cloth or copperplate. Megasthenes (McCrindle p. 69) no doubt says that Indians have no written laws, but there is no doubt that he is under some misapprehension as to what he was told, since in another place (p. 83) he refers to philosophers committing useful suggestions to writing. Similarly Strabo (XV. 1. 53–54) states that the Indians were ignorant of writing, but (67) narrates that Nearchus states that Indians write letters on cloth. One of the oldest copperplate grants is the Taxila plate of Moga (identified with Moa of the Śakas) and is not later than 120 B. C. Vide E. I. Vol. IV. p. 54 and Rapson's 'Indian coins' p. 7. It appears that wooden boards were used for writing ephemeral matters and *patra* for more permanent use, as Kāt. (p. 293, n. 400 above) states that the first information was to be written on a board with chalk and the formal plaint on a leaf (*patra*). The Lalitavistara (10th chap. p. 143, B. I. ed.) states that the Buddha used a board of sandal-wood for learning the scripts (-candanamayam lipiphalakam-ādāya).

Yāj. II. 84–94, Nār. IV. 69–75 and 135–146, Bṛ., Kāt. 249–312, Śukra II. 291–318, IV. 172–182 and several digests devote great attention to documents. A few salient points only will be brought out here. Nār. (IV. 70–71) eulogises documents by saying that if the Creator had not created writing which is like an excellent eye, the world would have come to grief and that a document is an indubitable means of apprehending the time, the place, the object, the material, the extent and the duration of a transaction. Bṛ. (q. in V. P. p. 141) says that, since[435] people begin to entertain doubts (about a transaction) even in six months (from an occurrence or transaction) the Creator therefore created in the hoary past letters which are recorded on writing material (*patra*). The Lalitavistara (about 2nd or 3rd century A. D.) mentions 64 scripts which were known to the Buddha, among which the first is Brāhmī (10th chap. p. 143). Nār., Bṛ., and Śukra probably try to explain why the alphabet current in their days was called Brāhmī (it was created by Brahmā). Śukra II. 297, IV. 5. 172 are similar verses. The texts divide documents in different ways. Viṣṇu[436] Dh. S.

435. षाण्मासिकेऽपि समये भ्रान्तिः संजायते नृणाम्। धात्राक्षराणि सृष्टानि पत्रारूढान्यतः पुरा॥ बृह. q. by व्य. नि. p. 81, व्य. प्र. p. 141; भ्रान्तेः पुरुषधर्मत्वाल्लेख्यं निर्णायकं परम्। ... अनुभूतस्य स्मृत्यर्थं लिखितं निर्मितं पुरा। यस्मात्तु ब्रह्मणा ब्राह्मी वर्णस्वरविचिह्नितम्॥ शुक्र II. 291 and 297.

436. राजाधिकरणे तन्नियुक्तकायस्थकृतं तदध्यक्षकरचिह्नितं राजसाक्षिकम्। विष्णुधर्मसूत्र VII. 3.

VII. 2 divides documents into three kinds viz. those written before the king (i. e. by public officers), those bearing the superscription of witnesses and those without witnesses. The first is a document written in a state office by a scribe appointed by the king and bearing the signature of the head or superintendent of the office. This is just like the registration of documents in modern India. Bṛ.[437] (q. by V. P. p. 141, V. May. p. 24) divides documents into three sorts viz. royal writing, writing made at a fixed place and that written in one's own hand. Nār. IV. 135 speaks of two kinds viz. one written by the executant himself in his own hand and that written by another ; (the first of these is valid) without attesting witnesses, while the second requires to be attested. In the former no writer (lekhaka) nor witnesses are necessary, while in the latter both are necessary. Even now in India no deed concerning even immoveable property is required by law to be attested except mortgages and gifts. The author of the Saṅgraha, the Mit. on Yāj. II. 84 and several others divide documents into *rājakīya* (public) and *jānapada* (private or of the common people). The V. Mayūkha (p. 24) says that *laukika* and *jānapada* are synonyms and jānapada document is of two kinds viz. written by the executant himself in his own hand and that written by another, and that the first may be without attestation of witnesses, but the other must be attested. On Yāj. II. 22 the Mit. divides documents into śāsana and cīraka. The first is the same as rājakīya (described in Yāj. I. 318-320) and cīraka is practically the same as jānapada writing. On Yāj. II. 89 the Mit. remarks that a royal deed must be written in correct and elegant language but a document executed by ordinary people is not required to be in correct Sanskrit, but may be written in the local dialect of the parties. Yāj. II. 89 states that a document written by the executant himself in his own hand is authoritative except when it is brought about by force or fraud. Yāj. II. 84-87 prescribe that a document of debt or the like should be written down by mutual agreement, that the creditor's name should be placed first, that it should

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437. राजलेख्यं स्थानकृतं स्वहस्तलिखितं तथा । लेख्यं तु त्रिविधं प्रोक्तं भिन्नं तद्बहुधा पुनः ॥ बृह. in व्य. प्र. p. 141, व्य. म. p. 24, परा. मा III. 119. स्थानकृत means 'written in a well-known place by a professional scribe appointed by the king or his officers and attested by witnesses.' राजकीयं जानपदं द्विविधं लिखितं स्मृतम् । शासनं राजकृतादौ चीरकं स्याद्धनादिषु ॥ प्रजापति q. by व्यव. नि. p. 82 ; व्यव. नि. p. 83 explains स्थानलेख्यं तु ग्रामजनपदादिव्यवस्थाधिकृतकायस्थकृतं तदुभयपक्षकराभिहितं चीरकमित्युच्यते ।.

mention the year, month, half month, *tithi* (day), the names, caste, gotras, the Vedic School, the names of the fathers of the parties, that when the writing is finished the debtor should write at the end that the deed is approved by N. N. (the executant) son of so and so, that an even number (i. e. not less than two) should attest the document, stating their father's names and that they attest as witnesses and the scribe should write at the end that he wrote the document at the request of both parties. If the debtor or any witness cannot write, his signature should be made by another in the presence of all witnesses (Nār. q. by Mit. on Yāj. II. 87 and by Vy. Nir. p. 87 without name). Rājakīya documents are of three kinds (acc. to Bṛ. quoted in V. P. p. 141, V. May. p. 24) viz. *śāsana* (a royal grant of land), *jayapatra* (a judgment deciding a law-suit), *prasāda-patra* (a deed showing the king's pleasure at the devoted service or bravery of a person); acc. to Vasiṣṭha (q. in Sm. C. II. p. 55 and V. May. p. 28) it is of four kinds viz. *śāsana*, *jayapatra*, *ājñāpatra* (a royal command addressed to feudatories, high or low officers like the wardens of the marches), *prajñāpanāpatra* (a writing of request addressed by the king to sacrificial priests, a *purohita*, teacher, learned brāhmaṇas or other highly honoured persons); it is five-fold acc. to S. V. pp. 111–113 viz. śāsana, jayapatra, ājñāpatra, prajñāpanāpatra and prasādapatra. Kauṭ. in II. 10 speaks of several kinds of royal orders and names them, such as prajñāpanā (request by a messenger about what another prays), ājñāpatra (as above), *paridāna* (honour to the deserving or gift in distress), *parihāra* (remission of taxes for certain castes or villages by the king), *nisṛṣṭilekha* (writing whereby the king accepts the actions or words of some trustworthy person as his own), *prāvṛttika* (conveying information about some portentous happening or some news about enemies etc.), *pratilekha* (reply in accordance with discussion held with the king on a message from another), *sarvatraga* (order addressed to high functionaries and officers for the welfare of travellers). The contents and form of royal grants have been described in H. of Dh. vol. II pp. 860–861. The jānapada writings are divided into various sorts, seven (acc. to Bṛ. q. by Aparārka p. 683, Sm. C. II. p. 60) or eight (acc. to Vyāsa in Sm. C. II. p. 59) and the Sm. C. remarks that there is no emphasis on the number and there may be many more varieties. Bṛ. (S. B. E. vol. 33 p. 305), Kāt. (254–257) and others mention and define the following jānapada writings; *bhāga-* or *vibhāgapatra* (deed of partition), *dānapatra* (deed of gift),

krayapatra (sale deed), *ādhānapatra* or *ādhipatra* (deed of pledge or mortgage), *sthitipatra* or *saṁvitpatra* (deed of convention, which is made by the inhabitants of a village or city or the members of a corporation or guild by mutual agreement for settling their conventions), *dāsapatra* (deed of bondage to serve executed by a person devoid of food or clothing), *ṛṇalekha* or *uddhārpatra* (bond of debt promising return at a future date with interest), *viśuddhipatra* (deed of purification given to a person with the attestation of witnesses when a penance for a sin has been performed), *sandhipatra* (deed of peace when a compromise in the presence of leading people after a charge of the commission of a crime has been made), *sīmāpatra* (deed of boundary when a dispute about it is settled), *upagata* (a receipt passed by the creditor to a debtor on payment of the whole or part of a debt, Yāj. II. 93), *anvādhipatra* (a sub-mortgage i. e. where the mortgagee or pledgee mortgages or pledges the property or thing to another and hands over the former deed to his own creditor). The two branches of private documents (jānapada) are either *ciraka* or not ciraka; ciraka is defined as a document written by hereditary scribes residing in the capital, who are approached by the parties and bearing the signatures of the parties and witnesses and the names of their fathers (Saṅgraha q. by Sm. C. II. p. 59, Par. M. III. p. 127). Vide n. 437 above and Śukra II. 299-318 and IV. 5. 172-177 for definitions of these and other kinds of documents. But acc. to Vyāsa quoted by Sm. C. II. p. 59 private documents are of eight kinds viz. ciraka, upagata (a receipt), svahasta (written by the executant himself), ādhipatra, krayapatra, sthitipatra, sandhipatra, viśuddhipatra. Some works like the Vyavahārasāra (p. 69) and the Mit. write the word as *cīraka* and not *ciraka*. It was so called (viz. *cīraka*) probably because it was written on the back (of the bark of the birch or some other tree). If the proper word is *ciraka* then it was employed because being executed by scribes appointed by the king, it had validity for all time (*cira*) as compared with purely private documents. 'Ciraka' in this last sense seems to be equal to 'sthānakṛta' of other writers.

Nār.[438] IV. 136, Viṣṇu. Dh. S. VII. 11 and Kāt. (252) require that a document is held valid which is not adverse to the custom of the country, the contents of which follow the rules

438. देशाचाराविरुद्धं यद्व्यक्ताधिविधिलक्षणम्। तत्प्रमाणं स्मृतं लेख्यमविलुप्तक्रमाक्षरम्॥ नारद IV. 136; देशाचाराविरुद्धं व्यक्ताधिविधिलक्षणमलुप्तक्रमाक्षरं प्रमाणम्। विष्णुधर्मसूत्र VII. 11.

regarding pledges (and other transactions) and the sequence of the sense and of the words in which is not contradictory or confusing. Sm. C. II. p. 59 applies the word[439] *pañcārūḍha* (on which five are recorded) to documents that are signed by the creditor, the debtor, two witnesses and the scribe. The Sarasvatīvilāsa p. 114 holds that *pañcārūḍhatva* consists in having the creditor, debtor, witnesses (as one item), scribe and the matter to be written. Hārīta and Vyāsa (q. in Sm. C. II. p. 59) employ the dual (sākṣiṇau), while Yāj. II. 87 employs the plural. Therefore ordinarily two witnesses sufficed, but in very important writings there should be more witnesses. Viśvarūpa reads 'asamāḥ' in Yāj. II. 87 and requires three witnesses as the minimum. Nār. IV. 137, Viṣṇu[440] Dh. S. VII. 6-10, Bṛ. (S. B. E. vol. 33 p. 307 v. 23.), Kāt. (271) state that a document is invalid that is executed by a person intoxicated, by one already charged (with an offence), by a woman, a minor, that has been brought about by threats or deceit or coercion, by one dying, by one diseased, by a lunatic, or by those that are dependent. Viṣṇu Dh. S. (VII. 8-9) and Kāt. 273 (q. by V. M. p. 338, Aparārka p. 686, Par. M. III. p. 131) state that a document may be held invalid owing to defects in the witnesses or in the scribe or to the fraud of the creditor or executant.

Nār. IV. 145, Kāt. (306-307), Saṁvarta (both quoted by Aparārka pp. 691-692) and Bṛ. (S. B. E. 33 p. 309 verse 31) say that no oral evidence should be allowed to contradict the (terms of a) document, that the mode of proving (a matter) by a document is always superior, that a writing can be refuted or superseded only by another document relating to the same matter and not by the oaths of witnesses and that if oral evidence

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439. उत्तमर्णाधमर्णौ च साक्षिणौ लेखकस्तथा । समवायेन चैतेषां लेख्यं कुर्वीत नान्यथा ॥ इति हारीतेन लेख्यमात्रे साक्षिणाविप्युक्तत्वात् । एवं चान्यकृतलेख्यस्योत्तमर्णाधमर्णसाक्षिद्वयलेखकरूपपञ्चपुरुषारूढत्वात्पञ्चारूढं पत्रमिति लोके व्यवहारः साक्षिसंख्याधिकत्वे चायं व्यवहारो गौण इति मन्तव्यम् । स्मृतिच० II. p. 59.

440. तद्बलात्कारितमप्रमाणम् । उपधिकृताश्च सर्व एव । दूषितकर्मदुष्टसाक्ष्यङ्कितं ससाक्षिकमपि । तादृग्विधेन लेखकेन लिखितं च । स्त्रीबालास्वतन्त्रमत्तोन्मत्तभीतताडितकृतं च । विष्णुधर्मसूत्र ,VII. 6-10 ; मुमूर्षुशिशुभीतार्तस्त्रीमत्तव्यसनातुरैः । निशोपधिबलात्कारकृतं लेख्यं न सिध्यति ॥ बृह. q. by स्मृतिच० II. p. 62. Manu. (VIII. 165 and 168) declares that fraud vitiates all transactions. Compare with Viṣṇu Dh. S. sections 10-12, 15-18 of the Indian Contract Act (of 1872). In I. L. R. 5 Bom. 99 at p. 104 'strīmatta' in Bṛ. (S. B. E. vol. 33 p. 307 v. 23) is taken as one word and rendered 'under female or aphrodisiac influence', which is not correct as shown by the texts of Viṣṇu and Kāt., where the two words are separated by other words.

were allowed to overrule the force of documents there would be confusion and an end to all written transactions[441]. If there is a conflict among documents then a *jānapada* document (written by a scribe and attested) is superior to one written in the hand of the executant himself and a public document is superior to a jānapada one (Vyāsa q. by Sm. C. II. p. 66, S. V. p. 122).

Yāj. II. 91, Nār. IV. 146 and Kāt. 312 (q. by Aparārka p. 687) prescribe that when a document is in another country or when it is illegibly written, when it is lost or its letters have become indistinct (by lapse of time or other causes) or it has been stolen or is crushed or burnt or shattered into pieces, another document may be caused to be written (if both parties agree) : but if they do not agree and the contents have to be proved or if the executant denies his signature, then Nār. IV. 142 and Kāt. (282 q. by Sm. C. II. p. 63) say that time may be given to bring it from the foreign country or the contents may be proved by the evidence of the attesting witnesses or of the scribe or of those that have seen it. This shows that the smṛti law required the production of the document itself as primary evidence, but allowed secondary evidence only in exceptional cases.[442] If a document belonging to one man is produced by another the latter has to explain his custody of it[443] (Vyāsa q. by Aparārka p. 690, Sm. C. II. 66). Kāt. (308 q. by Sm. C. II. p. 65) says[444] that just as the reflection of a person or thing made in a mirror is seen as if it were real though it is unreal, so clever people can fabricate documents resembling (the genuine writing of a person). Vyāsa (in Aparārka p. 688, Sm. C. II. 65) and Bṛ. (S. B. E. vol. 33 p. 307

441. न दिव्यैः साक्षिभिर्वापि हीयते लिखितं क्वचित् । लेख्यधर्मः सदा श्रेष्ठो हृतो नान्येन हीयते ॥ तद्युक्तिप्रतिलेख्येन तद्विशिष्टेन वा सदा । लेख्यक्रिया निरस्येत न साक्षिशपथैः क्वचित् ॥ कात्या. q. by अपरार्क p. 692; वाचिकैर्यदि सामर्थ्यमक्षराणां विहन्यते । क्रियाणां सर्वनाशः स्यादनवस्था च जायते ॥ संवर्त q. by अपरार्क p. 692. Compare sec. 92 of the Indian Evidence Act. The poet Māgha gives expression in his own laconic way to the same idea in निर्धारितेऽर्थे लेखेन खलूक्त्वा खलु वाचिकम् । शिशुपालवध II. 70.

442. Compare sec. 63 and 65 of the Indian Evidence Act about the meaning of secondary evidence and the circumstances under which it can be given.

443. यद्यान्यस्य कृतं लेख्यमन्यहस्ते प्रदृश्यते । अवश्यं तेन वक्तव्यं पत्रस्यागमनं ततः ॥ व्यास q. by अपरार्क p. 690.

444. दर्पणस्थं यथा बिम्बमसत्सदिव दृश्यते । तथा लेख्यस्य बिम्बानि कुर्वन्ति कुशला जनाः ॥ कात्या० in स्मृतिच० II. 65, व्य. प्र. p. 148, व्यव. नि. p. 91 (it attributes the verse to नारद).

vv. 20–21) say the same thing and add that documents have to be carefully scrutinized and that no certain conclusion can be established by documents alone (in every case), that women, minors and illiterate persons are deceived even by their relatives by the fabrication of documents bearing the names of these (women and others) and that this has to be investigated with skill. When there is a doubt about the genuineness of a document, it can be established by comparison with other documents admitted to be written or signed by the same person, by ratiocination, by the probability of the two parties being together at the time of the transaction, by citing the attesting witnesses,[445] by the peculiarities or flourishes in writing certain letters or making certain signs (in the writing questioned and in other admitted writings), the previous transactions between the parties (or their subsequent conduct), and the source of the acquisition of the subject matter in dispute (Yāj. II. 92, Viṣṇu Dh. S. VII. 12, Nār. IV. 143–144, Kāt. 283 q. in Mit. on Yāj. II. 92). Viṣṇu Dh. S. (VII. 13) and Kāt.[446] 285–286 (q. by Aparārka pp. 689–690) prescribe that if the debtor, creditor, witnesses or the scribe be dead the authenticity of the document has to be ascertained by (a comparison of the signatures on the disputed document) with other specimens of their handwriting or signatures or other documents executed by the debtor. Kāt. 287 (q. by Aparāka p. 689, Sm. C. II. p. 64 and Par. M. III. p. 134) states the striking[447] rule that when a document bears the royal seal, that document is presumed to be authentic, even though all the three (viz. the debtor, the witnesses and the scribe) are dead. This shows that documents bearing the king's seal or that of royal officers were regarded as prima facie genuine and this rule is analogous to the provisions in sec. 79 of the Indian Evidence Act and sections 59–60 of the Indian Registration Act. That even copperplate grants were sometimes forged is clear from the reference in the Madhuban plate of Emperor

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445. Vide sec. 68 of the Indian Evidence Act about the proof of attested documents.

446. अथ पञ्चत्वमापन्नो लेखकः सह साक्षिभिः । तत्स्वहस्तादिभिस्तेषां विशुध्येत् न संशयः ॥ ऋणिस्वहस्तसन्देहे जीवतो वा मृतस्य वा । तत्स्वहस्तकृतैरन्यैः पत्रैस्तल्लेख्यनिर्णयः ॥ कात्या. quoted by व्य. मा. p. 339, अपरार्क pp. 689–690, परा. मा. III. p. 134; स्मृतिच० II p. 63 ascribes the 2nd to हारीत. Compare sec. 69 and 73 (for proof of handwriting by comparison) of the Indian Evidence Act.

447. समुद्रेऽपि यदा लेख्ये मृताः सर्वेऽपि ते स्थिताः । लिखितं तत्प्रमाणं तु मृतेष्वपि हि तेषु च ॥ कात्या. quoted by अपरार्क p. 689, स्मृतिच० II. p. 64.

Harsa (E. I. VII. p. 155, 158), and from the Tārāchaṇḍi Rock Inscription (in Bihar) of Mahānāyaka Pratāpadhavaladeva (in E. I. XX. Appendix No. 340) of *saṁvat* 1225 which declares that a certain copperplate purporting to be issued by Vijayacandra of Kanoj was forged. Vide Fleet in I. A. vol. 30 pp. 201–223 for many forged grants. Verses (variously attributed to Kāt. or Bṛhaspati by the digests) state that when a loan (recorded in a document) has not been expressly claimed by the creditor able to claim from a debtor who is able to pay off and who is at hand, the document loses its validity because a suspicion arises that the debt has been paid off and that a document executed more than thirty years before which has never been seen (by any body) nor read out (by the creditor to any body) does not attain validity even though the witnesses on it are living. Nār. IV. 141 is very similar to this last. Kāt. 298–299, 301 (q. by Par. M. III. 136, Mit. on Yāj. II. 24, Aparārka p. 690–691) prescribe that if no objection is raised for twenty years as regards a patent fault in a document of debt or pledge or of the settlement of boundaries, then the document ceases to be voidable. Kāt. 275 and Br. (S. B. E. vol. 33 p. 302 v. 25) both quoted by Aparārka p. 671 and V. P. p. 122 require that the latent defects in documents or witnesses must be declared (pointed out) by the disputant at the (proper) time (i. e. when they are produced), while patent defects may be considered by the *sabhyas* at the time (of the consideration of the evidence) by reference to the rules of the śāstra. Yāj. II 93–94, Viṣṇu Dh. S. VI. 25–26[448] prescribe that when a debtor pays part of a debt, the debtor should write on the back of the document how much he paid or the creditor may hand over to the debtor a writing of receipt signed or written by himself, particularly when the original document is not at hand, and when the whole debt is paid or the contract is fully performed the creditor should tear off the document or should execute another document in order to make clear the fact of satisfaction.

The fabrication of royal edicts and private documents was so much condemned by the sentiments of society that Manu IX. 232 and Viṣṇu Dh. S. V. 9–10 prescribe the extreme penalty of death for such offences as in the case of the murder of women, minors and brāhmaṇas. Yāj. II. 295 (= Matsya 227. 202)

448. लिखितार्थे प्रविष्टे लिखितं पाटयेत् । असमग्रदाने लेख्यासंनिधाने चोत्तमर्णः स्वलिखितं दद्यात् । विष्णुधर्मसूत्र VI. 25–26.

prescribes the highest fine for him who adds to or writes less than what was intended to be declared in a royal grant or edict. Śaṅkha also prescribes death or the excision of a limb for fabrication of documents (q. by V. R. pp. 298, 369).

For detailed treatment about documents in ancient and medieval India two papers in the Annals of B. O. R. Institute, vol. IX. pp. 49-81 and in the Journal of the Andhra Historical Society, vol. 18 pp. 203-232 may be consulted.

CHAPTER XII

BHUKTI OR BHOGA (possession).

According to Gaut. X. 39 a man becomes an owner by inheritance, purchase, partition, seizure (appropriation of forest trees and other things which have no owner) and finding (i. e. appropriation of lost property the owner of which is unknown). Gaut. (X. 40–41) adds that in the case of brāhmaṇas acceptance (of a thing donated) is an additional mode (of becoming an owner), that conquest in the case of a kṣatriya and gain (by trade or labour) in the case of a vaiśya or śūdra are also additional modes. Vas. 16. 16 mentions eight modes. Bṛ. (quoted in V. P. p. 153, Aparārka p. 635, S. B. E. vol. 33 p. 309 v. 2) mentions seven modes of acquiring immovable property viz. by learning, purchase, mortgage, valour (i. e. conquest), through the wife (as dowry), inheritance (from an ancestor) and succession to an issueless kinsman. Nārada (q. in Sm. C. II. p. 70) mentions the same except mortgage. None of these expressly says that long possession is by itself a source of ownership. Great divergence[449] has prevailed throughout the centuries among the sages and digests about the relation of title and possession and about the length of possession necessary for making a person secure in his right to property by reason of possession. Possession (*bhukti*) may be with title (*sāgamā*) or without title (*anāgamā*). Āgama means ' origin ' or ' source of title ' such as purchase or simply ' title '.[450] Manu VIII. 200, Yāj. II. 27, Nār. IV. 84 employ that word in that sense. Vide Kāt. 317 (q. in Sm. C. II p. 73 and Par. M. III. p. 141). If property is held in one of the modes of acquiring ownership stated above and there is also possession, one's right to that property is indefeasible (Nār. IV. 85, Bṛ. q. by Sm. C. II. p. 70, S. B. E. 33 pp. 309 and 312 v. 3 and 22), but possession without a clear title

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449. Vide *Lalubhai* v. *Bai Amrit* I. L. R. 2 Bom. 299, 304 ff., where Mr. Justice West enters on an elaborate analysis of the doctrines of the Mit. and the Vyavahāramayūkha on title and possession.

450. स्वत्वहेतुः प्रतिग्रहक्रयादिः आगमः । मिता. on या II. 27 ; आ समन्ताद् गम्यते प्राप्यते स्वीक्रियते येन स आगमः क्रयादिरिति व्यवहारमातृका । आगमः साक्षिपत्रादिकमिति दीपकलिका । आगमो धनार्जनोपायः क्रयादिरिति मैथिलाः । व्यवहारतत्त्व p. 225.

does not lead to (or ripen into) ownership[451] (with certain exceptions to be noted later on). Vyāsa and Pitāmaha[452] declare that possession in order to be valid must have five characteristics viz. it must have title behind it, must be of long standing, unbroken, free from protest (by another person) and in the presence (i. e. before the very eyes) of the opponent (q. in Mit. on Yāj. II. 27 and Aparārka p. 635). Even title, if not accompanied by some slight possession, has no strength, while title is stronger than possession not handed down hereditarily (Yāj. II. 27). Nār. IV. 85 states that possession becomes strong when backed by clear title. These passages present some difficulty and make title and possession depend on each other. Nār. IV. 77 states that even if there be a document or witnesses to support a man's title, when there is no enjoyment, particularly in the case of immovable property, there is no validity. All that is meant is that a transfer without possession though under a deed or before witnesses is risky and that title and possession lend support to each other as stated by Nār. IV. 84–86, Bṛ., Hārita and Pitāmaha.[453] Nār. (IV. 86–87) declares that one who pleads mere possession and no title at all should be considered a thief on account of his putting forward the deceptive plea of possession (which even a thief can assert) and that the king should punish as a thief one who enjoys a property even for hundreds of years without title. All that this last verse means is that the person in possession must prove legal origin or such a long possession that there is no possibility of an inference that the possession

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451. भुक्त्या केवलया नैव भूमिः सिद्धिमवाप्नुयात् । आगमेनापि शुद्धेन द्वाभ्यां सिध्यति नान्यथा ॥ बृह. q. by स्मृतिच. II. p. 70.

452. सागमो दीर्घकालश्चाविच्छेदोऽपरवोज्झितः । प्रत्यर्थिसंनिधानश्च पञ्चाङ्गो भोग इष्यते ॥ व्यास q. by स्मृतिच. II. p. 71. This is also cited by the मिता. on या. II. 27 (without name). पितामह has almost the same words सागमा दीर्घकाला च विच्छिन्नापरवोज्झिता । प्रत्यर्थिसंनिधाना च भुक्तिः पञ्चविधा स्मृता ॥ स्मृतिच. II. p. 70.

453. पिङ्यलब्धक्रयाधानरिक्थशौर्यप्रवेदनात् । प्राप्ते सप्तविधे भोगः सागमः सिद्धिमाप्नुयात् ॥ बृह. in व्यव. नि. p. 126, व्य. प्र. p. 153; न मूलेन विना शाखा अन्तरिक्षे प्ररोहति । आगमस्तु भवेन्मूलं भुक्तिः शाखा प्रकीर्तिता ॥ हारीत; नागमेन विना भुक्तिर्नागमो भुक्तिवर्जितः । तयोरन्योन्यसम्बन्धात्प्रमाणत्वं व्यवस्थितम् ॥ पितामह, both q. by स्मृतिच. II. p. 70, म. वि. p. 131. The व्यव. नि. which regarded *tripuruṣa-bhoga* as equal to 60 years (p. 128) briefly explains the strength of title and possession as follows : आद्यविंशतावागमप्राबल्यं भोगस्य तद्ग्राहकत्वात् । द्वितीये भोगागमयोः साम्यम् । तृतीये भुक्तेः प्राबल्यम् । चतुर्थे पुरुषे पञ्चाङ्गभोग एव प्रमाणं नागमापेक्षेति सिद्धम् । p. 132.

of his ancestor originated is wrong. Delivery of possession was the principal mode of transferring ownership in ancient times in almost all systems of jurisprudence and so possession was given great weight as evidence of ownership.[454] The Mit. on Yāj. II. 27 makes the position clear. In the case of a gift or sale there must be the cessation of the ownership of the transferor and the arising of the ownership of the transferee. This last occurs only when the transferee accepts the property and not otherwise. Acceptance is mental, vocal and physical (i. e. the acceptor makes a resolve to accept, says that he accepts and takes physical possession). These three may exist in the case of such movable articles as gold, clothes &c. But in the case of a field physical acceptance is not possible except by enjoying the fruits or profits thereof. Therefore in order to make a gift or sale perfect there must be some slight possession at least. In the absence of such possession mere title is weak. Title may succeed against the man in possession who has no title and who has not been in possession for the prescribed period (such as three generations). If the possessor proves possession for that period he will succeed against one who has bare title and no possession whatever. If it is known or proved that a man purchased from A but got no possession and that another purchased from A subsequently and got possession (but was not in continuous possession for the prescribed period) the prior title though without possession will prevail over the later one, acc. to Yāj. II. 23. But when it is doubtful as to which title is prior and which posterior the one with possession will prevail. Where the possession has been uninterruptedly with a man's ancestors for three generations he will succeed against one who has bare title. Therefore possession was not absolutely indispensable for transfer even acc. to the Mit. and other works, but title without possession was risky and so possession was insisted upon as it was 'nine points of law'. It follows, acc. to the Mit., that (1) when possession was comparatively of short duration and not supported by any title much weight was not attached to possession and title by itself would prevail against it, that (2) continuous possession for three generations (though there is

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454. In English Law until the year 1845 (8 and 9 Vic. chap. 106, sec. 2) land could in theory be conveyed in no other method than by delivery of possession and no deed or conveyance was in itself of any effect. Vide Salmond's Jurisprudence, 9th ed. 1937, p. 620.

nothing to show there was title to begin with) will prevail over a mere documentary title and that (3) a prior title with less than the possession for three generations (but with some possession) succeeds over a later title accompanied by possession. Long possession was assumed to have originated in legal title, although owing to lapse of time it was not possible to prove the origin.[455] The main controversy has raged round the question of what is long possession. Yāj. II. 24 literally translated means 'loss of land results in twenty years when it is enjoyed by a stranger before the owner's very eyes and without any protest from him and loss of chattels (results under similar circumstances) in ten years'. Manu VIII. 147-148 and Nārada IV. 79-80 have two verses in common which mean 'If the owner of anything silently looks on (i. e. raises no protest) when it is being enjoyed in his presence for ten years by strangers he does not deserve to recover it (i.e. he loses the thing). When the owner is not an idiot nor a minor and his property is enjoyed within his sight then the property being lost by his conduct (*vyavahāra*) comes to belong to the enjoyer'. Gaut. XII. 34 has almost[456] the same words as Manu VIII. 148. Śaṅkha (in V. R. p. 208) also refers to ten years. These passages apparently mean that at the end of 20 or 10 years' adverse possession by the wrongful possessor the ownership of the original owner is lost and the wrongful possessor becomes the owner. But there are several other smṛti passages where it is said that possession even for a hundred years originating in wrong cannot confer title and much longer periods are required for the loss of ownership and the acquisition of ownership by prescription. Vide Nār. IV. 86-87 cited (on p. 318 above). Nār. (IV. 89) himself says elsewhere that possession requires

455. Under the Law of England 'Time immemorial or time whereof the memory of man runneth not to the contrary' was considered to include the whole period of time from the reign of Richard I. This was a very inconvenient and absurd rule which was abrogated by sec. 1 of the Prescription Act of 1832 (2 and 3 William IV, chap. 71) whereby the rights to any land became absolute and indefeasible by sixty years' uninterrupted enjoyment before that Act (except when the enjoyment was by some consent or agreement made under a deed). By French Law the time of memory was held to extend for one hundred years as done by the Mit. and other Sanskrit digests. Vide Salmond's Jurisprudence (9th ed. of 1937) p. 265-*note y*.

456. अजडापोगण्डधनं दशवर्षभुक्तं परैः सन्निधौ भोक्तुः ॥ गौ. XII. 34; ग्रामनगर क्षेत्रयोनिविरोधे दशवर्षभुक्तमन्यत्र राजाविमत्वात् । शङ्ख q. in वि. र. p. 208.

to be supported by title only during *smārtakāla* (during human memory), but in cases beyond human memory possession continued successively for three generations (or ancestors) is proof of ownership even in the absence of a document (or other title). Viṣṇu Dh. S. V. 187 is in similar[457] terms. The Mit. on Yāj. (II. 27) says that *smārtakāla* is a period of 100 years, as the Veda declares that the span of a man's life is 100 years. For a hundred years it is possible for witnesses to depose to the origin of possession. So if there is possession for less than one hundred years, oral evidence can be adduced for establishing its origin, and title will have to be proved by the possessor and if no oral evidence is adduced to prove title, it is a case in which it may be held as certain that there was no title to begin with. Mere possession is not enumerated by sages like Gautama among the means of acquiring ownership. As the Sarasvatīvilāsa (p. 124) puts it, long uninterrupted possession only leads to an inference that it originated in title acquired by sale, gift or the like i. e. there arises a presumption of lawful origin[458]. Therefore in order to enable a man to rely on possession alone as proof of ownership it must extend uninterruptedly over 100 years (acc. to the Mit.). The Smṛticandrikā[459] (II. p. 72) accepts this meaning, only requiring 105 years' possession instead of 100 years'. Acc. to a smṛti quoted by it each generation means 35 years and so when Nārada requires possession for three generations 105 years are meant (acc. to Sm. C.). Viṣṇu Dh. S. V. 187, Kāt. (327) also hold that continuous enjoyment for three generations makes the fourth generation owner of the land. Kāt. (321 q. by Mit. on Yāj. II. 27, Aparārka p. 636) states 'in cases falling within the memory of man it is desirable that possession must be accompanied with title

457. त्रिभिरेव तु या भुक्ता पुरुषैर्भूर्यथाविधि । लेख्याभावेऽपि तां तत्र चतुर्थः समवाप्नुयात् ॥ विष्णुधर्मसूत्र V. 187. The same is ascribed to both विष्णु and कात्यायन by व्य. मा. p. 341. The व्यव. नि. p. 130 ascribes it to अग्निमित्र.

458. भुक्तिरपि कैश्चिद्विशेषणैर्युक्ता स्वत्वहेतुभूतक्रयदानादिकमव्यभिचारादनुमापयति । अन्यथानुपपद्यमाना कल्पयतीत्यनुमानेऽर्थापत्तौ वान्तर्भवतीति प्रमाणमेव । सरस्वतीविलास p. 124 ; these words are apparently taken from the व्यव. नि p. 73.

459. एतदुक्तं भवति । स्मरणयोग्ये पञ्चाधिकशतवर्षपर्यन्तातीतकालमध्ये प्रारब्धा भुक्तिः स्वेतरप्रमाणावगतागममूलैव स्वत्वे प्रमाणमिष्यते । स्वतः स्वमूलावगतेर्योग्यानुपलब्ध्या बाध्यमानत्वात् । स्मरणयोग्ये पुनः पञ्चाधिकशतवर्षपर्यन्तातीतकालात्प्राचीनकाले प्रारब्धा स्वद्वाराऽनवगतागममूलिका विनापि मानान्तरावगतागममूलतां स्वत्वे प्रमाणमिति । स्मृतिच. II. p. 71.

(in order to be proof of ownership as to land); but in cases beyond the memory of man possession extending over three generations in succession (is independent proof of ownership), since there is no certainty that there was no title (to begin with)'. Vide also Bṛ. (in S. B. E. vol. 33 p. 313 verses 26–28). 'Three generations' is a vague expression. The great-grandfather, the grandfather and the father of a man may die in the space of ten years and if the great-grandfather took possession wrongfully and all died within ten years of the time of taking possession one after another, the fourth in descent might urge that there was possession for three generations and that he had become owner. Therefore Kāt. in another verse (318, q. by Aparārka p. 636 and V. P. p. 155) laid down that unbroken possession for three generations extending over sixty years becomes firm (independent means of proof of ownership). Thus *tripuruṣa-bhoga* or *pūrvakramāgata-bhoga* (in Yāj. II. 27) means the same thing as possession continuing from a time beyond human memory (*asmārta-kāla*) and is equal to 60 years acc. to Kāt., Vyāsa and a few other smṛti writers[460]. Nārada (q. by Aparārka p. 636) says that as regards possession one generation means twenty years, while Bṛ. (q. by Sm. C. II. p. 72) says it means thirty years. It will be noticed from the above that early authors like Gaut., Manu., Yāj. appear to lay down 20 years' adverse enjoyment of land as sufficient to create ownership, while other and comparatively later authors like Nār. and Kāt. require sixty years enjoyment. In order to remove this conflict and following the maxim that apparently conflicting texts should be reconciled as far as possible, the writers of commentaries and digests from Viśvarūpa and Medhātithi (on Manu VIII. 148) downwards proposed various interpretations of Yāj. II. 24 and similar texts. Some lay emphasis on possession and others on title. There are at least three explanations. Aparārka (pp. 631-632), Kullūka and Raghunandana take the literal sense and say that on 20 years' adverse possession there is loss of ownership (i. e. there

460. भुक्त्या पैतामही भुक्तिः पैतृकी चापि संमता । त्रिभिरेतैरविच्छिन्ना स्थिरा षष्ट्याब्दिकी मता ॥ कात्या०; वर्षाणि विंशतिं भुक्ता स्वामिनाऽव्याहता सती । भुक्तिः सा पौरुषी भुक्तिर्द्विगुणा च द्विपौरुषी । त्रिपौरुषी च त्रिगुणा न तत्रान्वेष्य आगमः ॥ नारद; both quoted by अपरार्क p. 636, and व्य. म. p. 155 which ascribes the verses वर्षाणि &c. to व्यास; परा. III, p. 142 also ascribes it to व्यास. प्रपितामहेन यद्भुक्तं तत्पुत्रेण विना च यत् । तौ विना यस्य पित्रा च तस्य भोगस्त्रिपौरुषः ॥ व्यास q. in व्यवहारमातृका p. 341.

is *svatvahāni*)[461]. The 2nd explanation is that the meaning of Yāj. II. 24 is that after 20 years' enjoyment by a stranger, if the owner brings a suit and relies on a document in his favour, he runs the risk of being unable to prove his ownership barely on the strength of the document, since it is possible to argue that, even though he had a document, by his silence he acquiesced in the stranger taking possession and tacitly consented to it. Therefore all that Yāj. II. 24 means or recommends is that an owner should not be negligent (*upekṣā*) or should not remain silent when a stranger takes wrongful possession. This view was first started by Viśvarūpa among extant writers and it approaches the modern idea of requiring vigilance in the assertion of ones' rights[462]; that is there is only loss of the suit (vyavahārahāni). This view lays emphasis on a verse attributed to Nār. and the word *vyavahāra* in it and in Manu VIII. 148 and Nārada IV. 80, where the word means lawsuit also, the idea being that the sages declare only what would happen or be decided by the judges in a law court and do not intend to say that the decision would be just or righteous from the higher or the moralist's point. The third view is that of the Mit. (followed by the Vyavahāramayūkha, Mitramiśra and several others) which[463] explains that the loss is not that of the ownership of the thing itself but of the produce of it (there is only '*phala-hāni*') i. e. if without protest the owner allows a stranger to remain in possession before his very eyes for twenty years and then he brings a suit, he may succeed in getting back his land but he would lose his claim to the profits of the land. The Mit., the Vyavahāramātṛkā and V. P. (pp. 157-165) contain very

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461. तस्माद्याज्ञवल्क्यादिवचनाद्विंशतिवर्षदशवर्षादिकालैर्भोग एव स्वत्वं जनयति तथा कालप्राप्तिबलेन बीजमङ्कुरं जनयति तरवश्च कुसुममिति स्वामिना चापरित्यक्तेपि शास्त्रोक्तकालीनभोगात्स्वाम्यमन्यस्य भवति यथा जयेन राज्ञः पराकृधने इति । एवमेव श्रीकरबालकयोग्लोकभवदेवभट्टशूलपाणिकुल्लूकभट्टचण्डेश्वरमन्त्रिवर्धमानोपाध्यायप्रभृतयः । व्यवहारोपि तादृगेव । एतद्विरुद्धवचनान्यन्यथा व्याख्येयानि । व्यवहारतत्त्व p. 223; तस्माद्व्याध्यादिव्यतिरिक्तस्य यथोक्तया भुक्त्या स्वत्वसिद्धिः । अपरार्क p. 632.

462. हानिश्चात्र लिखितबलेनात्मीयस्वत्वप्रसाधनमात्रस्याभिप्रेता । न पुनर्भुक्त्यादौ तत्फले वा स्वत्वस्य । नोपेक्षामात्रेण स्वत्वमपैतीत्युक्तत्वात् । स्मृतिच० II. p. 68; परैर्भुज्यमानं नोपेक्षणीयमित्यभिप्रायः । ... उपेक्षानिषेधमात्रं चैतत् । हानिवचनं तु निन्दामात्रत्वेनोपेक्षकस्य व्यवहारप्रवृत्त्ययोग्यतामात्रज्ञप्तिफलं तदेव चात्र युक्तम् । विश्वरूप on या. II. 26; उपेक्षां कुर्वतस्तस्य तूष्णींभूतस्य तिष्ठतः । कालेऽतिपन्ने पूर्वोक्तो व्यवहारो न सिध्यति ॥ नारद q. by अपरार्क (p. 632), स्मृतिच० II. 68.

463. तस्मात्स्वाम्युपेक्षालक्षणस्वापराधादस्माद्वचनाद्विंशतेरूर्ध्वं फलं नष्टं न लभत इति स्थितम् । मिता.

elaborate discussions on Yāj. II. 24; but considerations of space forbid any further reference to them. The V. M.[464] connects Yāj. II. 24 with the preceding verse (viz. that in mortgages, gifts and sales a prior transaction prevails over a later one) and remarks that this verse (Yāj. II. 24) says that if a person after a gift, sale, or mortgage to him allows the property to remain with the seller, donor or mortgagor, who subsequently transfers it to another with possession and the latter holds it for twenty years, then the first dealing though prior is of no avail (as it is not accompanied with possession for 20 years). Śrīkara (as stated in the Vyavahāramātṛkā) tried to reconcile the conflicting smṛti texts by holding that in twenty years the real owner lost ownership if he was present and did not protest while a stranger was in possession, but passages speaking about possession for three generations (or sixty years) applied only where the owner was absent. The Mit. and others point out that Yāj. II. 24 (who employs the words 'paśyataḥ' and 'abruvataḥ') conveys that if a stranger takes possession while the owner is absent or if the owner protests, then even 20 years' possession does not lead to the loss of anything. The text of Nār. IV. 87 quoted above (p. 318) shows that the sage held that possession for several hundred years even would not avail the possessor if it is certain or established that the possessor had no title at all to begin with or that his possession started wrongfully. This text is emphasized by those who favour title and want to discourage persons benefiting by their own wrongdoing. But there are other smṛti texts of a contrary tenor. For example, Nār. IV. 91 himself says 'whatever has been enjoyed even unlawfully for three generations (i. e. by three ancestors) including the father cannot be recovered by the owner from the person (who is the 4th in succession) because it has gone through three lives in succession'; a text of Hārita states 'what has been enjoyed by three prior ancestors without any title whatever cannot be recovered back (from the present holder, who is 4th), since it has descended successively through three generations'. These two are relied upon by those whe hold long possession as leading

464. अयं तस्यार्थः। क्रीताहितप्रतिगृहीतोद्विधनभूमिगतः परस्य दशविंशतिवार्षिको भोगः क्षमाकारणजङ्गत्वाभावेऽप्युपेक्षितत्वात्स्वत्वहानिं कुरुते । स्वोपभोगार्थे तेन क्रयास्तस्य च तेनोपेक्षितत्वादिति मुनीनामभिप्रायः।...तस्मात् 'पश्यतोऽब्रुवतः' इति वचनं 'आधौ प्रतिग्रहे क्रीते' इत्यस्यापवादकम्। आधिग्रहणक्रयणप्रतिग्रहकर्तृणामाहितक्रीतप्रतिगृहीतेषु गवाश्वादिषु योग्येषु दशवर्षाणि परभोगोपेक्षया स्वत्वहानिः। भूमौ तु विंशतिवार्षिकी । तेन वचनात्कारणत्वेनावधारिता उपेक्षा कार्यभूतां स्वत्वहानिं ज्ञापयति। व्यवहारमातृका p. 348-49.

to an inference of title (*tripuruṣa-bhuktivādinaḥ*, as Medhātithi on Manu VIII. 148 calls them). These like the Vyavahāra-tattva and Vivādacandra[465] who rely solely on possession boldly say that long possession even originating in wrong leads to ownership. Medhātithi says 'there can be no memory of the origin of title when there has been possession for hundreds of years and (if title had to be proved for the origin of such possession) a king may resume villages enjoyed by ancient temples, brāhmaṇas and maṭhas; therefore ancient possession is evidence of ownership because it makes it extremely probable that the ancient possession originated in gift or the like'. The Mit. on Yāj. II. 27 (which is *svatvavādi*) refers to all the three views, refutes the first two and accepts the view of loss of profits. It does not literally interpret the texts of Hārīta and Nārada quoted above, takes them to be over-statements and intended to convey that continuous possession for over three generations cannot be interfered with even if there is no clear proof of the origin of title. In modern India under the Indian Limitation Act (IX of 1908) the tendency is to prescribe the very short period of twelve years for adverse possession in order to defeat a title, following the English Real Property Limitation Act of 1833 (3 and 4 William IV chap. 27), sec. 2 of which insisting on vigilance by every one about one's rights however prescribes the period of 20 years within which to bring an action for recovery of land. Modern case law has rather gone too far and sets a premium on wrongful possession by holding that it is not necessary that adverse possession should have been brought to the knowledge of the real owner[466]. Ancient Hindu lawyers put down the tendency to usurp another's property and placed many obstacles in the way of the wrongful possessor.

It may be noted that there were a few rare texts that referred to very short periods for possession causing loss of

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465. अन्यायेनापि पित्रादित्रयभुक्तो भोगः प्रमाणमेव--अन्यायेनापि यद्भुक्तं पित्रा पूर्वतरैस्त्रिभिः । न तच्छक्यमपाकर्तुं क्रमात्त्रिपुरुषागतम् ॥ (नारद ४.९१)-इति वचनात् । पित्रेति पित्रा सहेत्यर्थः । अन्यायेनापि अन्यायानिश्चयेनापीत्यर्थः। तेन वस्तुतो भोग इत्याघातीति नान्यायभोगः प्रमाणमिति केचित् । अन्ये तु वचनबलाद्वैधविधोऽन्यायभोगोऽपि प्रमाणमेवेत्याहुः । चरमः पक्षोत्र समीचीनः । त्रिभिरेव यदा भुक्ता पुरुषैर्भूर्यथाविधि । लेख्याभावेपि तां तत्र चतुर्थः समवाप्नुयात् ॥ इति वचनात् । विवादचन्द्र p. 134. Vide note 457 above for the verse त्रिभिरेव.

466. Vide *The Secretary of State for India v. Debendra Lal Khan* 61 I. A. p. 78 at p. 82 (=36 Bom. L. R. 249) and *Srischandra Nandy v. Baijnath*, 62 I. A. 40 at p. 44 (=37 Bom. L. R. 323).

title, viz. 3 years for immovable property (provided there was no permissive origin, *kṣamāliṅga*) or one year for corn, cattle and other movables[467]. This idea being opposed to innumerable texts was explained away as merely conveying the great importance of possession. Marīci states[468] that cows, beasts of burden, ornaments that are borrowed through friendship should be returned within four or five years, otherwise the owner would lose them. This is opposed to Manu VIII. 146 and other texts and so is explained as being applicable only if there is no sufficient cause for allowing them to remain with the borrower. The ancient Roman Law was very like this. Before Justinian the Roman Law gave the ownership of a thing by quiet possession bona fide and founded on good title if maintained during one year over movables and during two years over immovable property[469]. Justinian altered this and provided that possession during three years gave ownership of movables and possession during ten years (if parties resided in the same province) or during twenty years (if they did not) gave the ownership of immovable property.

Bṛ. (S. B. E. vol. 33 p. 314 verse 31) lays down the proposition that if a person has title and is already in possession and is dispossessed by another then he may succeed in a lawsuit on the strength of his prior possession provided the dispossessor does not establish continuous possession for three generations[470]. This is similar to a suit in ejectment contemplated by Art. 142 of the Indian Limitation Act.

Bṛ. (S. B. E. vol. 33 p. 310 v. 11) and Kāt. 335 (both quoted by Aparārka p. 637, V. P. p. 166) state that what is enjoyed by a man's agnates and cognates and his own people does not pass to their ownership by their mere possession; one should regard

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467. अत्र बृहस्पतिर्विशेषमाह । त्रिवर्षं भुज्यते येन समग्रा भूरवारिता । तस्य सा नापहर्तव्या क्षमालिङ्गं न चेद्भवेत् ॥ चतुष्पाद्धनधान्यादि वर्षाद्धानिमवाप्नुयात् ॥ एतद्वचनं भुक्तेरादरार्थं यथाश्रुतं (न?) व्याख्येयं बहुप्रतिपक्षत्वादिति वरदराजः । स. वि. p. 135. Vide व्यव. नि. p. 132 from which this is taken, which introduces these verses with the words 'अत्र पञ्चाध्याय्यां बृहस्पतिः'. It is probable that the work of Bṛ. on vyavahāra had five adhyāyas.

468. धेनुवाह्यालङ्करणं याचितं प्रीतिकर्मणा । चतुःपञ्चाब्दिकं देयमन्यथा हानिमाप्नुयात् । मरीचि in स्मृतिच० II. 69, परा. मा. III. p. 148 (reads धनवाह्या°).

469. Vide Sandar's Introduction to the Institutes of Justinian, sec. 72.

470. सत्यपि विच्छेदे सागमा भुक्तिः प्रमाणमित्याह बृहस्पतिः । भुक्तिर्बलवती शास्त्राविच्छिन्ना चिरन्तनी । विच्छिन्नापि हि सा ज्ञेया या तु पूर्वप्रसाधिता ॥ इति । परा. मा. III. p. 144-145, स्मृतिच० II. p. 74.

possession (as leading to ownership) in cases other than these. Pitāmaha states that possession by a stranger is powerful, but possession by members of one's own family has certainly not the same force[471]. This appears to adumbrate the principle of modern law that possession by one co-owner or one tenant-in-common is ordinarily the possession of all co-owners and the mere fact that the profits of a property have been enjoyed by only one co-heir or tenant-in-common for many years does not by itself amount to the ouster of the other tenants-in-common[472]. It is stated in Gaut. XII. 35 that property which is enjoyed for a long time by a śrotriya, an ascetic or a king's officer is not lost to the owner by that enjoyment, since the owner may have thought that he would reap long-enduring spiritual merit by the first two enjoying this property (such as a vacant house) or that he might be prevented from asserting his right from fear (of the royal official). Compare Bṛ. (S. B. E. vol. 33 p. 311 v. 12).[473] Manu VIII. 149 (= Nār. IV. 81 and Vas. 16. 18), Yāj. II. 25, Bṛ. (S. B. E. 33 p. 312 v. 21), Kāt. (330) state the following exceptions to the rule of loss by long possession; a mortgaged or pledged property, boundary, minor's property, an open deposit, a sealed deposit, women (female slaves), the property of the king i. e. (of the State) and the property of a brāhmaṇa learned in the Veda are not lost by the possession of another (for twenty or ten years referred to in Manu VIII. 147 and Yāj. II. 24). Manu VIII. 145 provides that neither a pledge nor a deposit can be lost by lapse of time and that both are recoverable even if they have remained long (with the pledgee or depositee). Yāj. II. 25 adds to the above list the properties of idiots and of women. Nār. IV. 83 emphatically states that women's property (strīdhana) and state property (land) is not lost even after hundreds of years, when it is enjoyed without title. Kāt. (330) adds to the above list temple property and what is inherited

471. सनाभिभिर्बान्धवैश्च यद्भुक्तं स्वजनैस्तथा। भोगात्तत्र न सिद्धिः स्याद्भोगमन्यत्र कल्पयेत्॥ कात्या०; अस्वामिना तु यद्भुक्तं गृहक्षेत्रापणादिकम्। सुहृद्बन्धुसकुल्यस्य न तद्भोगेन हीयते॥ बृह.; both quoted by अपरार्क p. 637, व्यव. नि. pp. 128-129, व्य. प्र. p. 166, विवादचन्द्र p. 135 (2nd verse); the first is ascribed to both बृह. and कात्या. by व्यव. नि.; भुक्तिर्बलवती तत्र भोक्ता यत्र परो भवेत्। स्वगोत्रे भोगिनां भुक्तिर्न शक्ता शाश्वती नृणाम्। पितामह in स्मृतिच० II. p. 69.

472. Vide I. L. R. 46 Bom. 213, 31 Bom. L. R. 199 and 1030 (P. C.), 47 Cal. 274 for this proposition.

473. धर्मार्थश्रयः श्रोत्रिये स्याद् भयं स्याद् राजपूरुषे। स्नेहः सुहृद्बान्धवेषु भुक्तमेतैर्न हीयते। बृह. in स्मृतिच० II. p. 69, परा. मा. III. p. 149.

from the father or mother[474]. All systems of jurisprudence throw protection round the interests of minors, persons of unsound mind and others similarly situated and provide longer periods of possession for loss of their right. The Mit. on Yāj. II. 25 gives reasons why the several exceptions are made: in the case of a pledge or mortgage the property is enjoyed by the pledgee or mortgagee under an agreement and so there is no fault on the part of the owner if he remains quiet while the property is being enjoyed by the creditor; boundaries between villages can be easily established by such signs as trees (growing on the border), streaks of chaff and coal (buried underground); deposits are entrusted to a person out of confidence for being preserved and not for enjoyment; idiots and minors are ignorant or incapable of understanding their rights; the king being engrossed in numerous state affairs may not be able in time to look into the question about possession of state properties; women on account of their ignorance and timidity may not assert their rights and a learned brāhmaṇa being devoted to learning, teaching and performance of rites and duties may have no time to go to law. In modern times also the law favours minors and other persons as indicated in the note below[475]. Kāt. (331–334 q. by Par. M. III. p. 148, Sm. C. II p. 69

474. न भोगं कल्पयेत्स्त्रीषु देवराजधनेषु च। बालश्रोत्रियवित्तं च मातृतः पितृतः क्रमात् ॥ कात्या. quoted in व्य. मा. p. 351 (reads श्रोत्रियवृद्धे च प्राप्तंपि पितृतः &c). स्मृतिच. II. 69. उपनिधि and निक्षेप are defined by नारद as 'असंख्यातमविज्ञातं समुद्रं यन्निधीयते । तज्जानीयादुपनिधिं निक्षेपं गणितं विदुः ॥' (q. by मिता. on या. II. 65).

475. Under the Indian Limitation Act, a mortgagor can sue for redemption and possession within 60 years from the time when the right to redeem accrues (Art. 148), though for ordinary suits for possession the period is 12 years; while a pawnor of moveable property has 30 years (Art. 145) from the date of the pawn; if a thing is entrusted to a man for a specific purpose as a trustee then sec. 10 of the Limitation Act provides that no length of time will bar a suit for recovering from him or his legal representatives or voluntary assigns the trust property or its proceeds (*upanidhi* and *nikṣepa* may be examples of trust); a suit on behalf of the Secretary of State for India can be brought within 60 years (Art. 149); sections 6–8 provide longer periods for persons who were minors, idiots or lunatics at the time when their rights were invaded. Under the Real Property Limitation Act of 1833 (3 and 4 William IV chap. 27 sections 16 and 17) a suit could be brought within ten years of the time when the disability ceased in the case of minors, lunatics, idiots, *those absent beyond the seas*, but no suit can be

(*Continued on the next page*)

which ascribes them to Nārada) prescribes that in the case of a *brahmacāri*, engaged in his vow of veda study extending over 36 years, and in the case of a man who remains in a foreign country in pursuit of wealth, enjoyment extending over 50 years will alone make him lose his property by the possession of another ; that when a person has been a student for a shorter period than 36 years he may get longer additional periods proportionately and that when a person is in jail time does not run against him.

(*Continued from the last page*)

brought beyond forty years from the starting point. Section 13 of the Indian Limitation Act provides that when the defendant is absent from British India the plaintiff can add the period of defendant's absence to the period prescribed for bringing a suit but does not provide for the rule of Kāt. which allows a longer period for loss of right when a person (who may have to sue) is absent in a foreign country. Under the Civil Law of Rome the rule was '*nullum tempus occurrit regi*' (lapse of time does not bar the right of the crown). Vide *Vyakunta v. Government of Bombay* 12 Bom. H. C. R. (O. C. J.) 1 at p. 217 for this rule and its limitation under modern Indian Law.

CHAPTER XIII

WITNESSES (sākṣiṇaḥ).

The word *sākṣin* occurs in the Śvetāśvataropaniṣad[476] (VI. 11) where it is applied to the one immanent Spirit of the universe as All-seeing. Pāṇini[477] V. 2. 91 explains the word *sākṣin* as meaning 'one who has directly seen'. Gaut.[478] XIII. 1, Kauṭ. III. 11, Nār. IV. 147 state that when two persons litigate and there is a doubt or discrepancy between the two the determination of the truth in the dispute is due to witnesses. Manu VIII. 74, Sabhāparva[479] 68.84, Nār. IV. 148, Viṣṇu Dh. S. 8. 13, Kāt. 346 (q. in V. M. p. 317 and V. P. p. 106) provide that a (proper) witness is one who has himself either seen or heard or experienced the matter in dispute. This means that the evidence of a witness must be direct and should not be what is called hearsay. Medhātithi (on Manu VIII. 74) says[480] that hearsay evidence occurs when a person who hears from another that has himself heard something from another comes forward as a witness and that hearsay is no legal evidence. Manu VIII. 76 prescribes that even though a man may not have been expressly asked or appointed by the parties (in the words 'you are the witness to this transaction'), he is a proper witness when asked as to any matter in dispute that he has himself seen or heard. The only exception to hearsay evidence allowed by

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476. एको देवः सर्वभूतेषु गूढः ... साक्षी चेता केवलो निर्गुणश्च ॥ श्वेताश्वतरोपनिषद् VI. 11.

477. साक्षाद्द्रष्टरि संज्ञायाम् । पा. V. 2. 91.

478. विप्रतिपत्तौ साक्षिनिमित्ता सत्यव्यवस्था । गौ. XIII. 1; असंप्रतिपत्तौ तु साक्षिणः प्रमाणम् । कौटिलीय III. 11.

479. श्रुतदृष्टानुभूतार्थात् साक्षिभ्यो व्यक्तिदर्शनम् । नारद IV. 147 ; अर्थिप्रत्यर्थिसांनिध्यादनुभूतं तु यद्भवेत् । तद्ग्राह्यं साक्षिणो वाक्यमन्यथा न बृहस्पतिः ॥ कात्या. in व्य. प्र. p. 106 ; समक्षदर्शनात्साक्षी श्रवणाच्चेति धारणात् । सभापर्व 68. 84 ; समक्षदर्शनात्साक्षी श्रवणाद्वा । विष्णुधर्मसूत्र 8. 13.

480. समक्षदर्शनात्साक्षादनुभवाच्छ्रवणाच्च समक्षशब्दोऽनुषङ्गः कर्तव्यः । यत् कुतश्चिदेकेन श्रुतं ततोऽन्येन तत्परंपराश्रुतं तेन परंपराश्रावी न साक्षी । मे. on मनु. 8. 74; चक्षुषा श्रोत्रेण वा येन विवादविषयः पूर्वं प्रमितः स तत्र साक्षीत्यर्थः । ... तेन यो विवादविषयो येन प्रमितः स तत्र साक्षित्वेनाकृतोऽपि साक्षी भवतीति सिध्यति इतरथा चेतनादानादिषु विवादेषु लिखितादीनामसंभवेन साक्ष्यभावप्रसङ्गः । मदनरत्न (ms). Compare व्य. प्र. p. 109 for almost the same words.

the Viṣṇu Dh. S. VIII. 12 is that[481] when a person that is appointed as a witness is dead or gone abroad, those who have heard what he said may give evidence. It has already been stated. (p. 297) that a king was not to delay the examination of witnesses. Kāt. (340–341 q. by Aparārka pp. 675, 677, Sm. C. II. p. 92, V. M. p. 331) prescribes that the king (or the chief judge) should himself examine the witnesses that are present (in court) and should consider along with the *sabhyas* the statements made by witnesses and that, where it is doubtful who the witnesses on a disputed matter are, time should be given for producing the witnesses in order to ascertain the proper means of proof but that where it is clear who the witnesses may be he should make the hearing of the case proceed at once. Kāt. (352) further prescribes[482] that when it is impossible to bring witnesses because they reside in a foreign country, evidence taken in writing before a man learned in the three Vedas and sent by him should be read in deciding the cause[483]. Gaut. 13. 2, Manu VIII. 60, Yāj. II. 69, Nār. IV. 153 and others require that ordinarily there should be at least three witnesses in a cause. Bṛ. (S. B. E. 33 p. 301 v. 16) says that there may be nine, seven, five, four or three witnesses, or two only if they are learned brāhmaṇas[484]. Viṣṇu Dh. S. VIII. 5 and Bṛ. (S. B. E. vol. 33 p. 301 v. 16) emphasize that a single witness alone cannot be examined for deciding a matter[485].

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481. उद्दिष्टसाक्षिणि मृते देशान्तरगते वा तदभिहितश्रोतारः प्रमाणम् । विष्णुधर्मसूत्र VIII. 12.

482. अशक्य आगमो यत्र विदेशं प्रतिवादिनाम् (विदेशप्रतिवासिनाम्?) । त्रैविद्यप्रहितं लेख्यसाक्ष्यं तत्र प्रवाचयेत् ॥ कात्या. q. by अपरार्क p. 667.

483. This corresponds to the modern rule of taking evidence on commission as provided for in Order 26 rules 4 and 5 of the Indian Civil Pro. Code (of 1908).

484. नव सप्त पञ्च वा स्युश्चत्वारस्त्रय एव वा । उभौ वा श्रोत्रियौ स्यातौ नैकं पृच्छेत्कदाचन ॥ बृह. q. by स्मृतिच. II. 76 (adds उभाविति लिखितगूढसाक्षिविषयम्), परा. मा. III. 95, व्य. प्र. p. 112.

485. Vide Best on 'Evidence' (12th ed. of 1922) p. 515: 'The Mosaic law in some cases and the Civilians and Canonists in all exacted the evidence of more than one witness, a doctrine adopted by most nations in Europe and by the ecclesiastical and some other tribunals among us'. According to the Common Law of England and the Indian Evidence Act (I of 1872) sec. 134, no particular number of witnesses shall in any case be required for the proof of any fact. Best (*ibid.* p. 520) notices that in prosecutions for perjury the testimony of at least two witnesses is required by the Common Law of England (now confirmed by Statute) and that by Statute two witnesses at least are required in trials for treason. Vide *Emperor v. Bal Gangadhar Tilak* 6 Bom. L. R. 324 where the rule about two witnesses in convictions for perjury according to the Common Law of England was relied on.

But Yāj. II. 72, Viṣṇu Dh. S. VIII. 9, Nār. IV. 192 state that one man alone may be a witness in a cause if he is endowed with the regular performance of his religious duties (is possessed of the qualities stated in Viṣṇu Dh. S. VIII. 8) and is accepted as a witness by both sides. Vide Manu VIII. 77 also. Bṛ. (S. B. E. vol. 33 p. 301 v. 18) allows a single witness to furnish valid proof if he is a dūtaka[486] (messenger), an accountant, one who has accidentally witnessed the transaction or if he is the king or the chief justice. Vyāsa says[487] that even a single person may be enough in a cause, especially in heinous offences called *sāhasa*, if he be one whose actions are pure, who knows the *dharma* and whose truthfulness has been well attested before. Kauṭ. (III. 11) says that a single witness (whether a man or a woman) may be enough in cases where the transaction in question was effected in secret (except the king and one performing austerities).[488] Kāt. (353–355 q. by V. M. pp. 319–320, Sm. C. II. 76, V. P. pp. 112–113) states that even a single person may be allowed to depose as a witness if he was taken in confidence at the time of making a deposit; so also a messenger sent by a litigant for borrowing an article (such as an ornament) or the manufacturer of an article may alone be sufficient to prove the identity of the article or when a matter has been decided by the king or chief judge, the scribe, the chief justice or any one of the sabhyas may alone prove the plea of *res judicata* or the point as to what was said by the plaintiff or the defendant in a suit[489]. Vide Bṛ. (S. B. E. 33 p. 300 verses 13–14).

The qualifications of witnesses to be examined in a suit are stated in numerous places such as Gaut. XIII. 2, Kauṭ. III. 11, Manu VIII. 62–63, Vas. 16·28, Śaṅkha-Likhita (q. in S. V. p. 138), Yāj. II. 68, Nār. IV. 153–154, Viṣṇu Dh. S. VIII. 8, Bṛ. (S. B. E. vol. 33 p. 302 v. 28), Kāt. 347 (in Sm. C. II. p. 76 and

486. Bṛ. (S. B. E. vol. 33 p. 300 v. 8) defines a *dūtaka* as one who is a respectable man esteemed and appointed by both parties and had come near to listen to the speeches of the parties.

487. शुचिक्रियश्च धर्मज्ञः साक्षी यत्रानुभूतवाक् । प्रमाणमेकोपि भवेत्साहसेषु विशेषतः ॥ व्यास in स्मृतिच. II. p. 76, व्य. प्र. p. 112.

488. रहस्यव्यवहारेष्वेका स्त्री पुरुष उपश्रोता उपद्रष्टा वा साक्षी स्याद्राजतापसवर्जम्। कौटिल्य III. 11.

489. अर्थिप्रत्यर्थिनोर्वाक्यं यच्छ्रुतं भूभृता स्वयम् । स एव तत्र साक्षी स्याद्विसंवादे द्वयोरपि ॥ निर्णीते व्यवहारे तु पुनर्न्यायो यदा भवेत् । अध्यक्षः सभ्यसहितः साक्षी स्यात् तत्र ॥ बृह. q. by अपरार्क p. 667, व्य. प्र. p. 108.

V. P. p. 111). The principal qualifications are ;[489a] they should be born of a good family, should have lived hereditarily in the country, should be householders having a son or sons, should be well-to-do and men of character, should be trustworthy, should know dharma and act up to it, should not be covetous and should have been cited by the parties as witnesses. Some Smṛti texts such as Kauṭ. III. 11, Manu VIII. 68 (= Kāt. 351 and Vas. 16 · 30), Kāt. 348 provide[490] that ordinarily witnesses should be of the same *varṇa* or caste as the parties, that women should be witnesses in disputes between women, that men of the lowest castes (*antyajas*) should be witnesses for litigants of those castes and that a litigant of a lower caste should not try to prove his case by citing witnesses of a higher caste or a brāhmaṇa (unless the latter is an attesting witness on a deed). But most (even including Gaut. and Manu) give an option and say that persons of all castes (even śūdras) may be witnesses for all. Vide Gaut. XIII. 3, Manu VIII. 69, Yāj. II. 69, Nār. IV. 154, Vas. 16 · 29 (*sarveṣu sarva eva vā*). Nār. IV. 155 and Kāt. (349–50 q. by Aparārka p. 666 and V. P. pp. 111–112) provide[491] that in disputes between members of groups such as those who wear peculiar symbols (indicative of their sect), śreṇis (guilds), pūgas (associations), companies of traders and all others who work in groups and who are therefore called *vargas* and in the case of slaves, bards, wrestlers, elephant riders, horse-trainers and soldiers the heads (called *vargin*) of these groups are the proper witnesses. Gaut. XI. 21 says that in disputes among members of classes of agriculturists, traders, cowherds, money-

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489a. बहवः स्युरनिन्दिताः स्वकर्मसु प्रात्ययिका राज्ञां निष्प्रीत्यनभितापाश्चान्यतरस्मिन् । गौ. XIII. 2 ; प्रात्ययिकाः शुचयोऽनुमता वा त्र्यवरार्ध्याः पक्षानुमतौ वा द्वौ ऋणं प्रति न त्वेवैकः । कौ. III. 11 ; कुलजा वृत्तवित्तसंपन्ना यज्वानस्तपस्विनः पुत्रिणो धर्मज्ञा अधीयानाः सत्यवन्तः त्रैविद्यवृद्धाः । विष्णु VIII. 8 ; मौलाः प्रतिष्ठिताः साक्ष्यर्थे विवृतवन्तः कुलीना ऋजवो जन्मतः कर्मतोऽर्थतः शुद्धाः पुत्रिणः सत्यवादिनः श्रौतस्मार्तक्रियायुक्ता विगतद्वेषमत्सरा अप्रवासिनो युवानो लोभमोहविवर्जितास्त्र्यवरा नवसंख्याका न जातु कूटतां प्रतिपद्यन्ते । शङ्खलिखितौ in स. वि. p. 138

490. ब्राह्मणस्त्वब्राह्मणवचनादनवरोध्योऽनिबद्धश्चेत् । गौ. XIII. 4 ; विभाव्यो वादिना यादृक् सदृशैरेव भावयेत् । नोत्कृष्टैश्चापकृष्टस्तु साक्षिभिर्भावयेत्सदा ॥ कात्या. q. by व्य. प्र. p. 111, मदनरत्न (which reads नोत्कृष्टं चापकृष्टैस्तु, which seems to mean 'a litigant of a higher caste should not be proved to be what he is alleged to be by the evidence of witnesses of lower castes ').

491. लिङ्गिनः श्रेणिपूगाश्च वणिग्व्रातास्तथापरे । समूहस्थाश्च ये चान्ये वर्गास्तानब्रवीद्भृगुः । दासचारणमल्लानां हस्त्यश्वायुधजीविनाम् । प्रत्येकैकः समूहानां नायका वर्गिणस्तथा । तेषां वादः स्ववर्गेषु वर्गिणस्तेषु साक्षिणः । कात्या. q. by अपरार्क p. 666. For श्रेणि, पूग, vide p. 280 and note 383 above and H. of Dh. vol, II. pp. 67–68.

lenders and craftsmen (such as carpenters and washermen), the help of other members of the same calling may be taken as witnesses and arbitrators.

Long lists of persons who are generally to be regarded as incompetent to be witnesses are given in Kauṭ. III. 11, Manu VIII. 64–67, Udyogaparva 35. 44–47, Yāj. II. 70–71, Nār. IV. 177–187, Viṣṇu Dh. S. VIII. 1–4, Bṛ. (S. B. E. vol. 33 p. 303 vv. 29–30), Kāt. 360–364 (q. by Aparārka pp. 669–670, Sm. C. II. pp. 77–78, V. P. p. 119). Manu VIII. 118 states the general grounds why oral evidence tends to be false viz. covetousness, infatuation, fear, desire of pleasures, anger, friendship, ignorance, minority. As the list of incompetent witnesses in Nār. is the longest,[492] that alone is set out here: one who has monetary[493] interest in the parties or the subject matter of the suit (such as a co-sharer, creditor and debtor of the parties); a

492. Vide appendix for the verses of Nārada. The commentaries and digests give various interpretations of some of the words. A few such are stated in the next note.

493. The Mit. explains 'arthasambandhin' as 'vipratipadyamānārtha-sambandhin'; while V. P. p. 117 explains as 'creditor or debtor' of a party. 'Āptāḥ' is defined by Kāt. 361 (quoted by Aparārka p. 669) as 'those who depend for livelihood on the subsistence given by a party to the suit or those who serve him or cause benefit to him or those who are his relatives, friends or servants'. Sm. C. explains 'cākrika' as a bard, while V. P. (p. 118) as oil-presser. The printed text of Nār. reads 'aśrāddha' (who is not invited at a śrāddha), while V. P. and others read 'aśraddha'; for vrātya (one whose upanayana has not been performed) vide H. of Dh. vol. II. p. 376; 'prāg-dṛṣṭadoṣa' is explained by Asahāya as 'one who suffers from a disease which is the effect of evil actions done in past lives'. Kāt. 362 (q. by Aparārka p. 669) explains 'sanābhayaḥ' as sons of one's mother's sister or one's full sister or one's maternal uncle. The printed text reads 'śrānta', while Sm. C. II. p. 78 reads 'aśānta' (restless) and V. P. 117 reads 'aśrānta' (one constantly engaged in work). Kulika is explained as 'one appointed by the king to decide causes' (by Kalpataru), while the Madanaratna says 'he is the person in authority over a kula i. e. a group of brāhmaṇas or the like'. Vide V. P. p. 119. Sm. C. II. p. 78 and V. P. p. 118 read 'sūcaka' (one appointed by the king to find out crime among the people) for 'stāvaka' of the printed Nār.

friend (or relative such as an uncle); associate (in undertakings); enemy; one who has already been held to have given false evidence; one charged with (or addicted to) sins; a slave; one who is in the habit of finding the weak points of others (or harming others); one who has no faith in religion; a very old man (above 80 years); a minor; a woman; an oil-presser; one intoxicated; a lunatic; one who is extremely inattentive; one distressed; a gambler; a village priest; one who undertakes long journeys (on the great roads); one who is a merchant engaged in sea voyages; an ascetic (who has renounced the world); one sick; one bereft of a limb; one who is the only witness; a brāhmaṇa learned in the Veda; one who does not perform the customary religious rites; an impotent person; an actor; an atheist; a *vrātya*; one who has abandoned his wife; one who has given up *agnihotra* (daily offerings into *śrauta* or *smārta* fire); one that officiates as priest for persons who are not entitled to perform vedic sacrifices; one who is an associate in eating food from the same vessel in which food is cooked (i. e. who is in commensality with a party); a former enemy (*aricara* as one word); a spy; an agnate; a cognate (or born of the same womb); one whose evil doings in former lives are seen clearly; a public dancer (śailūṣa, or one who makes his women actresses); one who lives by (i. e. buys or sells) poison; a snake-catcher; one who is a poisoner, an incendiary, a mean person (*kīnāśa*, or parsimonious person); the son of a śudra woman (from one of a higher caste); one guilty of a minor sin (upapātaka); one fatigued; a desperado; one who has relinquished all attachments; a person who is penniless (through gambling or other extravagance); a member of the lowest (untouchable) caste; one leading a bad life; a brahmacārin who has not yet returned from his teacher's house; an idiot; an oil-seller; a seller of roots; one possessed (by a ghost or demon); one hated by the king; a weather-prophet; an astrologer; one who proclaims to the public the sins of others; one who has sold himself (for money); one who has a limb too little (e. g. having four fingers to the hand); one who lives on the immorality of his wife; one who has bad nails; one with black teeth; one who has betrayed his friend; a rogue; a seller of liquor; a juggler; an avaricious man; a ferocious man; an opponent of a śreṇi (guild) or gaṇa (association); a butcher; a hide-worker; a cripple; one excommunicated for a grave sin (like brāhmaṇa-murder); a forger (of documents or coins or weights &c.); one who employs incantations and drugs for influencing

others; one who is an apostate[494] from the order of ascetics (*pratyavasita*); a robber; a servant of the king; a brāhmaṇa who sells human beings, cattle, meat, bones, honey, milk, water or clarified butter; a member of the three higher castes who engages in usury; one who has given up the peculiar duties of his caste (or station); a *kulika*; a bard; one who is the servant of a low person; one who has quarrelled with his father; one who causes dissensions. Kauṭ. III. 11, Manu VIII. 65, Viṣṇu Dh. S. VIII. 1 and several others say that the king cannot be cited as a witness[495] (except possibly to prove the plea of *res judicata* or to prove what transpired before him when a litigation was going on).

The above is a formidable list of incompetent witnesses; therefore, most Smṛtis such as Gaut. XIII. 9, Kauṭ. III. 11, Manu VIII. 72, Yāj. II. 72, Nār. IV. 188-189, Viṣṇu Dh. S. III. 6, Uśanas (q. in Sm. C. II. p. 79), Kāt. 365-366 (q. in Sm. C. II. p. 79) expressly point out that strict examination of the character of witnesses should be entered upon in disputes about debts and

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494. In *Omichand v. Barker* (Willes 1737-1860 p. 538) where Willes (Lord Chief Justice) says (at p. 551) that in Popish times and for some little time afterwards till the Reformation was fully established there was a notion that 'even an alien friend especially if he were an infidel could not sue in a court of justice here'. That shows how non-Christians found it difficult to sue in England for their just rights a few centuries back. In the case cited above Lord Chief Justice Willes had to deliver an elaborate judgment in 1745 for holding that evidence taken in India according to the oaths administered to non-Christian witnesses could be read in a trial held in England. So one need not laugh at Nār. who flourished at least about 1200 years before that date if he held an atheist or an apostate to be an incompetent witness. It should be noted that 'By the canon Law a Jew is not admitted to give evidence against a Christian, especially if he be a clergyman;' vide Taylor on Evidence (ed. of 1848, p. 655 note C.)

495. Vide Taylor's 'Law of Evidence' (12th ed.) vol. II. p. 872 para 1381 about the sovereign giving evidence on oath; his considered opinion being (after referring to the case of *R. v. Mylius* in which the defendant was prosecuted for a libel upon king George V) 'that the sovereign if so pleased may be examined as a witness in any case, civil or criminal, but not without being sworn.' The व्यव. नि. p.100 says ननु न साक्षी नृपतिः कार्य इति राज्ञः साक्षित्वनिषेधात्। तस्य कथं साक्षित्वमिति चेत्, उच्यते। व्यवहारदर्शनकालेऽवगतेष्वर्थेषु तस्यैव साक्षित्वमुच्यते, कालान्तरापेक्षया निषेधः। तथा च व्यासः। राज्ञा धर्मासनस्थेन यच्छ्रुतं तत्त्वनिश्चिता। नान्यः साक्षी भवेत्तत्र मुक्त्वा राजानमीश्वरम्। इति। बृहस्पतिः। निर्णीते व्यवहारे तु पुनर्न्यायो यदा भवेत्। अध्यक्षः सभ्यसहितः साक्षी स्यात्तत्र नान्यथा॥. The स्मृतिच. II. p. 80 and व्य. मा. III. p. 103 have the verse of बृहस्पति. न साक्षी नृपतिः कार्यः in मनु. VIII. 65.

the like which are of a fixed nature (of a civil nature), but that in complaints about all kinds of *sāhasa* (heinous crime), in robbery, adultery or the two kinds of *pāruṣya* (viz. defamation and assault) there should be no (strict) inquiry into the character of witnesses (that is, all can be witnesses in such cases) and that even those like slaves and fault-finders who have been enumerated among incompetent witnesses can become witnesses in grave matters[496]. The idea is that in such cases the witnesses need not be strictly examined as to their possessing the good qualities ordinarily required in witnesses. But this does not authorize the examination of such persons as lunatics or idiots as witnesses, because they have not the power to understand things. Manu VIII. 77 emphatically states that even a single male, if he is free from greed, may be (sufficient as) a witness, but not women of good character, even though they be many, since the feminine intellect is apt to be unsteady. But even Manu had to concede (VIII. 70) that a woman or a minor or a very old person or a pupil, relative, slave or a hired servant may be a (competent) witness, if it is impossible to find another witness (in matters that occurred inside a house or in a forest or in crimes where life is lost). Kāt. 367 (q. by Aparārka p. 671) says the same thing. Uśanas[497] (quoted in the Sm. C. II. p. 79, V. P. p. 120) provides that even a slave, a blind man, a deaf person, a leper, a woman, a minor, a very old man may be (competent) witnesses in *sāhasa*, provided they are not interested in the matter of dispute (or are not related or partial to the parties). Nār. (IV. 190–191) gives it as his view that even when there is to be no strict inquiry into the character of witnesses in *sāhasa*, still a minor, a woman, a single person, one who forges deeds (or who is a

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496. ऋणादिषु परीक्षेत साक्षिणः स्थिरकर्मसु । साहसात्ययिके चैव परीक्षा कुत्रचित्स्मृता ॥ स्याघातेषु नृपाज्ञायाः संग्रहे साहसेषु च । स्तेयपारुष्ययोश्चैव न परीक्षेत साक्षिणः ॥ अन्तर्वेश्मनि रात्रौ च बहिर्ग्रामाच्च यद्भवेत् । एतेष्वेवाभियोगेषु न परीक्षेत साक्षिणः ॥ कात्या. in अपरार्क p, 670–71, स्मृतिच. II. p, 79; पारुष्यस्तेयसंग्रहणेषु तु वैरिस्यालसहायवर्जाः । कौ. III. 11.

497. दासोऽन्धो बधिरः कुष्ठी स्त्रीबालस्थविरादयः । एतेप्यनभिसम्बन्धाः साहसे साक्षिणो मताः ॥ उशनस् q. by स्मृतिच. II. p. 79. साहस is of four kinds 'मनुष्यमारणं चौर्यं परदाराभिमर्शनम् । पारुष्यमुभयं चैव साहसं तु चतुर्विधम् ॥ q. by अपरार्क p. 670 (as from मनु), परा. मा. III. p, 450 (as from बृह.), व्य. प्र. p. 120. यत्र पुमांसावर्थिप्रत्यर्थिनौ तत्र स्त्रीणां साक्ष्यं नास्ति यत्र तु स्त्रिया सह पुंसः कार्यं स्त्रीणां चेतरेतरं स्वल्पं तत्र भवन्त्येव स्त्रियः साक्षिण्यः । न चायं नियमः स्त्रीणां स्त्रिय एव साक्ष्यं कुर्युर्न पुमांसः । केवलं युवतिविषये व्यवहारे कश्चिदेव स्त्रीणां साक्ष्यं यतोऽस्थिरत्वादिति हेतुरुपात्तः । भवन्ति काश्चन स्त्रियो ब्रह्मवादिन्य इव सत्यवादिन्यः स्थिरबुद्धयश्च । मेधा॰ on मनु VIII. 68.

cheat), a relative and an enemy cannot be witnesses in *sāhasa*, since a child through ignorance, a woman from her habit of untruthfulness, a forger (or cheat) because he is accustomed to doing evil deeds, a relative from affection and an enemy from the idea of taking revenge may speak falsely. There was no total disqualification of women as witnesses, since Manu quoted above allows them to be witnesses in disputes between women and in cases where it is not possible to have other witnesses. Medhātithi on Manu VIII. 68 holds that women are disqualified as witnesses only where the plaintiff and defendant are both males but that where there is a litigation between a man and a woman or between women alone, a woman may be a competent witness. Ancient Hindu Law is not singular in its partial rejection of the testimony of women. Vide Best on Evidence (12th ed. of 1922) pp. 53-56 where it is shown how ancient Roman Law and the Medieval laws of several countries of Europe more or less excluded the testimony of women, how some States in the U.S.A. excluded the testimony of negroes and persons of coloured blood. By the Canon Law more credit was given to male than female witnesses (Taylor on Evidence, ed. of 1848 p. 655, note d).

Nār. (IV. 157-172) states that incompetent witnesses fall into five classes : (1) some[498] like learned brāhmaṇas, very old men, ascetics, persons practising austerities are incompetent because ancient texts (*vacana*) say so and there is no other (special) reason for their exclusion. The Vyavahāratattva

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498. असाक्ष्यपि हि शास्त्रेऽस्मिन् दृष्टः पञ्चविधो बुधैः । वचनाद्दोषतो भेदात्स्वयमुक्तिर्मृतान्तरः ॥ श्रोत्रिया तापसा वृद्धा ये च प्रव्रजिता नराः । असाक्षिणस्ते वचनान्नात्र हेतुरुदाहृतः ॥ स्तेनाः साहसिकाश्चण्डाः कितवा वधकाश्च ये । असाक्षिणस्ते दुष्टत्वात्तेषु सत्यं न विद्यते ॥ राज्ञा परिगृहीतेषु साक्षिष्वेकार्थनिश्चये । वचनं यत्र भिद्येत ते स्युर्भेदादसाक्षिणः ॥ अनिर्दिष्टस्तु साक्षित्वे स्वयमेवैत्य यो वदेत् । सूचीत्युक्तः स शास्त्रेषु न स साक्षित्वमर्हति ॥ योऽर्थः श्रावयितव्यः स्यात्तस्मिन्नसति चार्थिनि । क तद्वदतु साक्षित्वमित्यसाक्षी मृतान्तरः ॥ नारद IV. 157-162; compare नारद IV. 94 'सन्तोपि न प्रमाणं स्युर्मृते धनिनि साक्षिणः । अन्यत्र श्रावितायस्मात्स्वयमासन्नमृत्युना ॥'. शंख q. by मिता. on या. II. 69 says 'पित्रा विवदमानशुक्रकुलवासिपरिव्राजकवानप्रस्थनिर्ग्रन्थाश्चासाक्षिणः'. This may be one of the texts to which Nār. refers in the words असाक्षिणस्ते वचनात्'. The व्य. प्र. p. 115 explains मृतान्तर as सामान्यतो य आवयोः कश्चिद् व्यवहारसम्बन्धोऽस्ति तत्र त्वया साक्षिणा भाव्यमित्येतावन्मात्रमुक्तं विशिष्य च व्यवहारविषयो न तस्मै श्रावितः श्रावयिता च नास्ति स पृष्टोऽपि विशिष्य विषयाज्ञानादसाक्षीति यावत् । '. The स्मृतिच. II. p. 81 and व्यव. नि. p. 106 explain मृतान्तर differently : धनिनि प्रेते अनावेदिते च व्यवहारे अनाहूतः सन् स्वयमेवैत्य मृतपुत्रं निर्दिश्याहमस्यास्तौ धारयति अहं साक्षीति यो ब्रवीति असौ मृतान्तरनामा असाक्षी । मुमूर्षुणा पुत्रं प्रति श्राविते तस्मिन्कार्येऽसौ साक्षीत्येव श्रावितः पुत्रं प्रति साक्षी भवत्येव । व्यव. नि. p. 106.

(p. 214) points out that śrotriyas and others cannot be appointed as witnesses, but they may be what is called *akṛta* witnesses explained below (i. e. they may if they choose appear as witnesses in a cause). They are not competent like the king, not because they are untrustworthy but because it is not advisable to call them. They were privileged persons; (2) thieves, robbers, dangerous characters, gamblers, assasins are declared to be incompetent because there is the defect (*doṣa*) of untruthfulness in them; (3) witnesses are rendered incompetent on the ground of contradiction (*bheda*), when the statement of witnesses who have been accepted by the king for determination of the same matter do not agree; (4) he who without having been appointed (by the parties to a transaction) as a witness (to it) comes of his own accord to depose is termed a *sūcī* (i. e. a spy) in the *śāstras* (and so was styled *svayamukti* by Nār. IV. 157) and is unworthy to be a witness; (5) a person is incompetent as a witness by reason of intervening death (i. e. he is *mṛtāntara*); when can any person bear testimony if the creditor (or claimant) is no longer alive, whose claim should have been heard by him specifically (but was not heard in that way)? *Mṛtāntara* is a witness whom one or other of the parties informed in a general way that there was some dealing between the parties and who was asked to be a witness (but was not told the details of the dealing) and then subsequently the party died. In such a case the person told is not a good witness, as he cannot give the details. But Nār. (IV. 94) mentions an exception to this last rule viz. when a father while on the point of death tells his sons and the like 'these are the witnesses on such and such a matter,' there even after the father's death those witnesses would be competent though death intervenes.

Witnesses are divided by Nār. IV. 149 into two sorts; (1) those appointed (*kṛta*) by the parties and (2) those not appointed (*akṛta*); the first being of five kinds and the last of six kinds. The first five (acc. to Nār. IV. 150) are a subscribing witness (*likhita*), one who has been reminded (*smārita*) i. e. one who is called as a witness without there being a document and who is present at a transaction and is again and again reminded of it by a party to it in order that the transaction may be effectively proved thereafter (Kāt. 371 and 372 q. in Mit. on Yāj. II. 68), a casual witness i. e. one, who, while a transaction is being entered into, comes there by mere chance and is then asked to be a witness (yadṛcchābhijña or yādṛcchika,

acc. to Bṛ.), a secret witness i. e. one who is made to listen to the speech of the debtor while concealed behind a wall or screen, an indirect (*uttara*)[499] witness (i. e. one who learns from a witness who has seen or heard of a transaction when the latter is going to a distant country or is on the point of death). The six *akṛta* witnesses (acc. to Nār. IV. 151–152) are co-villagers (in disputes about boundaries), the chief judge, the king (before whom a suit was tried), one who is closely acquainted with the transaction of the parties (i. e. *kāryamadhyagata*, acc. to Bṛ.), one who is deputed by a party (for borrowing an ornament or for settling a transaction, called *dūtaka* by Bṛ.), members of the family (*kulya*) in disputes among other members of the family (as regards partition &c.). Bṛ. mentions twelve kinds of witnesses that are practically the same as the eleven of Nār. except one which he adds viz. *lekhita*[500] (one whose name is caused to be written by a party in the presence of the witness when that party enters into some transaction in writing such as a loan with another). The only difference between 'likhita' and 'lekhita' seems to be that the first himself writes his own name as a witness on a document while the latter's name is written as a witness by one party in the presence of the other and of the witness. Bṛ. (S. B. E. vol. 33 p. 299 verses 4–15 q. by Aparārka pp. 666–667) defines at great length all the twelve and Kāt. also defines most of them, but these definitions are passed over as not very important. Viśvarūpa remarks that these nice distinctions among eleven kinds of witnesses are made only for the sake of exposition and for the benefit of simple people[501].

499. यत्र साक्षी दिशं गच्छेन्मुमूर्षुर्वा यथाक्रमम् । अन्यं संश्रावयेत्तं तु विद्यादुत्तरसाक्षिणम् ॥ बृह. in अपरार्क p. 666; साक्षिणामपि यः साक्ष्यमुपर्युपरि भाषते । श्रवणाच्छ्रावणाद्वापि स साक्ष्युत्तरसंज्ञितः ॥ कात्या. q. by मिता. on या. II. 68. Dr. Jolly's rendering of Kāt. in S. B. E. 33 p. 80 n. is not correct. Vide my notes to व्यवहारमयूख pp. 66–67. The व्यवहारतत्त्व reads 'यत्साक्ष्यं स्वपक्षे परिभाषताम् । श्रव०;' vide the विष्णुधर्मसूत्र VIII. 12 quoted in n. 481 which refers to a witness that is the same as उत्तर. Compare sec. 32 of the Indian Evidence Act about verbal or written statements of a person who is dead or whose attendance cannot be procured except after unreasonable delay or expense.

500. अर्थिना च क्रियाभेदैस्तस्य कृत्वा ऋणादिकम् । प्रत्यक्षं लिख्यते यस्तु लेखितः स उदाहृतः ॥ बृह. q. by व्य. म. p. 108. अपरार्क p. 667 reads संलिख्य क्रियाभेदैः कार्यं कृत्वा.

501. यत्तु नारदेनैकादशविधं साक्ष्यं कृताकृतत्वभेदेनोक्तं तत्सोद्वाग्मुग्धजनव्युत्पादनार्थम् । विश्वरूप on या. II. 71.

Before a witness for a party begins to depose, it is the duty of the opposite party to point out the ground or grounds, if any, of the incompetence of the witness put forward for examination. Kāt. adds[502] that the latent defects of the witnesses of a party must be pointed out by the opposite party, but the patent defects will be considered by the members of the court at the time of giving their decision. Vyāsa[503] states 'the defects of the witnesses of a party should be pointed out by the opponent in open court by putting them down in writing and the witnesses should be called upon (by the judge) to refute them; if the witnesses admit (the faults pointed out) they do not deserve to be witnesses; if otherwise (if the faults are not admitted) they should be established by the opponent with evidence (other than those of other witnesses); for if the defects of the witnesses of a party were allowed to be established by other witnesses to be cited by the opponent, there would result the fault of a never-ending series (*anavasthā*), since the first party would then try to show defects in the latter set of witnesses and this may have to be carried on *ad infinitum*.' Bṛ. laid down that an opponent should not be allowed to point out the grounds of incompetency in witnesses after they have begun to depose and Kāt. adds[504] that he (that party), who points out, after the witnesses have deposed to a matter, faults in them in whom he found none at first and who can not set out a proper reason (for his not proclaiming the faults at first) should be fined in

502. प्रमाणस्य हि ये दोषा वक्तव्यास्ते विवादिना। गूढास्तु प्रकटाः सभ्यैः काले शास्त्रप्रदर्शनात्॥ कात्या q. by अपरार्क p. 671, स्मृतिच. II. p. 83 which adds काले निर्णयकाले. The व्य. म. p. 39 says 'गूढाः शास्त्रप्रदर्शनेन साक्षिवादात्पूर्वकाले वक्तव्याः'.

503. साक्षिदोषाः प्रयोक्तव्याः संसदि प्रतिवादिना। पत्रेऽभिलेख्य तान् सर्वान् वाच्याः प्रत्युत्तरं तु ते॥ प्रतिपत्तौ न साक्षित्वमर्हन्ति तु कदाचन। अतोऽन्यथा भावनीयाः क्रियया प्रतिवादिना॥ अन्यैस्तु साक्षिभिः साध्ये दूषणे पूर्वसाक्षिणाम्। अनवस्था भवेद्दोषस्तेषामप्यन्यसम्भवात्॥ व्यास q. by स्मृतिच. II. p. 83, व्य. म. p. 38 (first two). The first two are ascribed to कात्या. by परा. मा. III. p. 106 and व्यव. नि. pp 112-113. The मिता० on या. II. 73 has the following lucid note 'प्रतिवादिना साक्षिदूषणे कृते प्रत्यक्षयोग्यदूषणेषु बाल्यादिषु तथैव निर्णयः। अयोग्येषु तु तद्वचनाल्लोकतश्च निर्णयो न साक्ष्यन्तरेणेति नानवस्था। यदि साक्षिदोषमुद्भाव्य साधयितुं न शक्नोति प्रतिवादी तदासौ सारानुसारेण दण्ड्यः। अथ साधयति तदा न साक्षिणः।'. Compare sections 148 and 153 of the Indian Evidence Act about cross examination to shake the credit of a witness.

504. लेख्यदोषास्तु ये केचित्साक्षिणां चैव ये स्मृताः। वादकाले तु वक्तव्याः पश्चादुक्तान्न दूषयेत्॥ उक्तेऽर्थे साक्षिणो यस्तु दूषयेत्प्रागदूषितान्। न च तत्कारणं ब्रूयात्प्राप्नुयात् पूर्वसाहसम्। कात्या. in स्मृतिच. p. 83, स. वि. pp. 143-144. The first is ascribed to बृहस्पति by अपरार्क p. 672.

the first amercement. Bṛ. further states[505] that the defendant may point out the defects, if they exist, in the witnesses cited by the plaintiff; but if he finds faults which do not exist in the witnesses, he should be punished with a fine equal to the amount claimed (in monetary disputes) or equal to that which is levied from a false witness. If the witness of a party is not able to refute the defect pointed out by the opponent, the party calling him should try to clear his witness of the fault; otherwise he should not succeed in his suit.

When a witness is about[506] to depose, he was, acc, to Bṛ. (S. B. E. 33 p. 302 v. 23), to put off his shoes and turban, raise his right hand (in order to draw the attention of the Court) and after touching gold, cowdung or *darbha* grass was to depose to the truth. Āp. Dh. S. II. 11. 29. 7. says[507] that a witness should depose to the truth on an auspicious day in the morning in the presence of kindled fire and near (a jar of) water in the hall presided over by the king (or chief justice) and after being exhorted as regards both (viz. the results of truthfulness and falsehood) and when accepted by all (the court and parties) as a competent witness. Kauṭ. also (in III. 11) says that witnesses should be examined in the presence of brāhmaṇas, water-jar and fire. Manu (VIII. 79-80) provides that the judge should in a conciliatory manner exhort all witnesses assembled inside the court in the presence of the plaintiff and defendant as follows: 'whatever acts of these two (litigants) between themselves you know as regards this matter (in dispute), narrate them all truthfully, since you are the witnesses in this case'. Yāj. II. 73 also states that witnesses should be made to depose in the presence of the parties and Gaut. XIII. 13 and Kāt. (q. by Mit. on Yāj. II. 73) prescribe that witnesses[508]

505. साक्षिणोर्थिसमुद्दिष्टान् सम्यग्दोषेषु दूषयेत् । असद्दोषान्दूषयन्वादी तत्समं दण्डमर्हति ॥ बृह० q. by स्मृतिच० II. p. 83, स. वि. p. 143.

506. विहायोपानहावुष्णीषं दक्षिणं पाणिमुद्धरेत् । हिरण्यगोशकृद्दर्भान् समादाय ऋतं वदेत् ॥ बृह० ; प्राङ्मुखोवस्थितः साक्षी शपथैः शापितः स्वकैः । हिरण्य...दर्भानुपस्पृश्य वदेदृतम् ॥ वसिष्ठ ; both q. by स. वि. p. 157, परा. मा. III. p. 112. The first is ascribed to कात्यायन by व्यव. नि. p.. 116 (reads हिरण्यगोबीजदर्भान् समालभ्य ऋतं वदेत्).

507. पुण्याहे प्रातरग्नाविद्धेऽपामन्ते राजवत्युभयतः समाख्याप्य सर्वानुमते मुख्यः सत्यं प्रश्नं ब्रूयात् । आप. ध. II. 11. 29. 7.

508. देवब्राह्मणसांनिध्ये साक्ष्यं पृच्छेदृतं द्विजान् । उदङ्मुखान्प्राङ्मुखान्वा पूर्वाह्णे वै शुचिः शुचीन् ॥ आहूय साक्षिणः पृच्छेन्नियम्य शपथैर्भृशम् । समस्तान् विदिताचारान् विज्ञातार्थान् पृथक्पृथक् ॥ कात्या. 344–45 q. by मिता. on या. II. 73. The first is मनु VIII. 87 and the 2nd is नारद IV. 198.

should face the east or north, are to be examined in the presence of the images of gods and brāhmaṇas in the first half of the day and should be exhorted to tell the truth by being bound with oaths. This examination in the public and after an oath went a long way in checking the tendency to depose falsely. The oath consisted of two parts, viz. (1) the requirement to tell the truth and (2) the exhortatory and imprecatory part. Both were administered by the presiding judge. Gaut. (XIII. 12-13) appears to prescribe that an oath (*śapatha*) was not to be administered to brāhmaṇa witness, but Manu VIII. 113 (= Nār. IV. 199) does not make this distinction. Gaut. (XIII. 14-23), Manu VIII. 81-86, 89-101, Viṣṇu Dh. S. VIII. 24-37, Nār. IV. 201-228 contain very long exhortations addressed by the judge to the witnesses relating to the importance and high worth of truth, stating how the conscience of a man pricks him, what rewards await the truthful witness here and in the next world and what sin and terrible torments in Hell are the lot of an untruthful witness, what evil befalls even the deceased ancestors of an untruthful witness and how he is liable to be punished by the king. They are too long to be cited here[509]. Shorter exhortations are found in Yāj. II. 73-75, Vas 16. 32-34, Baud. Dh. S. I. 10. 19. 9-12 (S. B. E. vol. XIV p. 203), Bṛ. (S. B. E. vol. 33 p. 301 verses 19-22), Kāt. 343. Nār. IV. 200 provides 'let him (the judge) inspire them (the witnesses) with awe by (quoting) ancient texts, extolling the greatness of truth and denouncing falsehood'. Kaut. (III. 11), Manu VIII. 88 and 113 (=Nār. IV. 199), Viṣṇu Dh. S. VIII. 20-23 add further modes of speech and exhortations according to the *varṇa* of the witness: A brāhmaṇa witness is to be addressed by the judge as 'speak' and to be exhorted to swear by his veracity, a kṣatriya one was to be addressed as 'speak the truth' and to be sworn by the animal he rides and his weapons (which he is to touch), a vaiśya is to be sworn by his kine, grain and gold and a śūdra is to be sworn by (imprecating on his head) all grave sins. Manu VIII. 88 provides that a brāhmaṇa should be asked to depose

509. Vide Appendix for Nārada's verses.

510. The exhortation in the अर्थशास्त्र (III. 11) is somewhat different from Manu's 'तत्र ब्राह्मणं ब्रूयात्सत्यं ब्रूहीति राजन्यं वैश्यं वा मा तवेष्टापूर्तफलं, कपालहस्तः शत्रुबलं भिक्षार्थी गच्छेरिति शूद्रं जन्ममरणान्तरे यद्वः पुण्यफलं तद्राजानं गच्छेत्, राज्ञश्च किल्बिषं युष्मानन्यथावादे। दण्डश्चानुबन्धः पश्चादपि ज्ञायेत यथादृष्टश्रुतम्। एकमन्त्राः सत्यमवहरतेति।'. The text in Dr. Sham Shastri's edition is rather corrupt and not properly arranged.

with the word 'speak', while VIII. 113 states that a brāhmaṇa is to be made to swear by his truth. Some explain that the first rule applies to excellent brāhmaṇas and the second to inferior ones and rely on Gaut. (XIII. 12-13) who prescribes that an oath to speak the truth is not to be administered to brāhmaṇas but only to others. Vide Haradatta on Gaut. and Vivādacandra p. 127. Manu VIII. 102 (=Baud. Dh. S. I. 5. 95) is careful to point out that the exhortation is not to depend purely on the caste but that brāhmaṇas (and others) who tend kine, who engage in trade, who are craftsmen or actors, who are menial servants and usurers should be treated (by the judge) as śūdras[511] (in the matter of taking oaths). Witnesses after they are assembled before the Court are to be ordinarily examined separately (vide Kāt. quoted in n. 508 above). But Gaut. XIII. 5 and Kāt. 394 provide[512] that if a certain matter is seen by the witnesses as a body then they may be examined together. Manu VIII. 78 and Kāt. 392 prescribe that what the witnesses declare quite naturally (without hesitation and fear) should be taken down and that when the witnesses have declared (what they know) they should not be questioned again and again by the king (or judge). From the Smṛtis and the 9th Act of the Mṛcchakaṭika it appears that

511. The Mit. on Yāj. II. 73 explains Manu VIII. 113 as follows: a brāhmaṇa witness is to be sworn by being told that if he spoke untruth his truth will perish, a kṣatriya that his vehicle and arms will be fruitless, a vaiśya that his cattle, grain and gold will be lost and a śūdra that all sins will be his lot. Others explain differently. The Vyavahāratattva p. 215 says 'गोबीजकाञ्चनापहारे यत्पापं तत्सत्वानृताभिधाने स्यादिति वैश्यम्'. The दीपकलिका on या. II. 74 says the same. Medhātithi on Manu VIII. 113 appears to hold that the exhortatory part is repeated by the witness. यद्यहमेवं कुर्यां तादृशमनिष्टमाप्नुयामिति संकीर्तनक्रिया शपथः । तत्र यः शाप्यते स एवं वाच्यते सत्येन शपे सत्यादिनिबन्धनीयं धर्मो वा मे निष्फलः स्यादिति । ... गोबीजकाञ्चनानि वैश्यो हस्तेन स्पर्शयित्वाभिशपेदेतानि वा मे निष्फलानीति पूर्ववत् ।'. The Madanaratna says that brāhmaṇas following such avocations as rearing cattle should be made to take an oath like śūdras, गोरक्षणादिभिरपकृष्टा ब्राह्मणास्तु शूद्रवच्छपथं कार्यन्ते ये व्यपेताः स्वकर्मभ्यः परपिण्डोपजीविनः । द्विजत्वमभिकाङ्क्षन्ति तांश्च शूद्रवदाचरेत् ॥. Vas. III. 1 and Manu II. 168 provide that brāhmaṇas who have not studied the Veda, who do not expound it or do not keep the sacred fires become equal to śūdras. The Indian Oaths Act (X of 1873) sec. 6 allows a witness who has an objection to taking an oath to make an affirmation.

512. समवेतैस्तु यद् दृष्टं वक्तव्यं तत्तथैव तु । विभिन्नैकैककार्यं यद्वक्तव्यं तत्पृथक् पृथक् ॥ कात्या. q. in अपरार्क p. 675. Vide व्य. प्र. p. 126 for two different readings and interpretations of गौ. XIII. 5. स्वभावोक्तं वचस्तेषां ग्राह्यं यद्दोषवर्जितम् । उक्ते तु साक्षिणो राज्ञा न प्रष्टव्याः पुनः पुनः ॥ कात्या q. in अपरार्क p. 675, मिता. on या. II. 79 (without name).

it was the chief judge or the judges who put questions and that there was no elaborate cross-examination and re-examination of witnesses as in England (which practice is followed in modern India). The only cross examination that appears to have been allowed was about the faults or grounds that made a person an incompetent witness. In this respect ancient Indian practice resembled modern judicial practice in some European[513] countries other than England. Witnesses were compelled to attend. Kauṭ. III. 11 states that witnesses who are not far removed by time or space should be produced by the parties themselves, but those who are far away or who are unwilling to stir shall be got summoned by order of the king[514]. Manu VIII. 107, Yāj. II. 77, Br., Kāt. and Viṣṇu Dh. S. VIII. 37 say that if a witness knowing all facts and not prevented from coming by disease or similar causes refuses to come as a witness he incurs the sin of false witness, has to pay the amount in dispute and ten per cent thereof as fine to the king. This is in accordance with the principle enforced in modern times that it is the duty of a citizen to appear before a court of justice when summoned. Kauṭ. (III. 1) provides for subsistence allowance to witnesses. It is not quite clear whether parties could be regarded under ancient Hindu Law as competent witnesses on their own behalf. Yāj. (II. 13–15) appears to suggest that parties could be regarded as witnesses in their own cause and held to be false from their demeanour as in the case of witnesses. Kaut. IV.[515] 8 and the 9th Act of the Mṛcchakaṭika show that the accused was questioned by the Court as to his movements about the time of the alleged offence and till his arrest. Śukra [516]

513. Vide Stephens' 'History of the Criminal Law of England' (1883), vol. I. chap. XII, where on p. 431 he remarks 'cross examination is a highly characteristic part of an English trial, whether civil or criminal, and hardly any of the contrasts between the English and continental systems strikes an English lawyer so forcibly as its absence in the continental system.'

514. देशकालाविदूरस्थान् साक्षिणः प्रतिपादयेत् । दूरस्थानप्रसारान्वा स्वामिवाक्येन साधयेत् ॥ कौ. III. 11 last verse; आहूतो यस्तु नागच्छेत्साक्षी रोगविवर्जितः । ऋणं दमं च दाप्यः स्यात्त्रिपक्षात्परतस्तु सः ॥ बृह. q. by स्मृतिच. II p. 91, परा. मा. III. p. 115; compare Order 16 rules 10–15 (of the Indian Civil Procedure Code) about the compellability of witnesses and the remedies against such as disobey a summons.

515. ततः पूर्वस्याह्नः प्रचारं रात्रौ निवासं चाग्रहणादिति अनुयुञ्जीत । कौटिल्य IV. 8.

516. स्वेतरः कार्यविज्ञानी यः स साक्षी ह्यनेकधा । दृष्टार्थश्च श्रुतार्थश्च कृतश्चैवाकृतो द्विधा ॥ शुक्र. IV. 5. 184.

IV. 5. 184 defines sākṣī in such a way as to exclude the litigant himself. Ordinarily witnesses were examined in the open court in the presence of the parties and never behind their back, but Kāt. (387–389) prescribes that in the case of immovable property oral evidence may be taken on the property itself and in some cases even elsewhere than these two (viz. the Court and immovable property), that is, in the case of the death of living beings witnesses may be made to depose before the corpse (of the animal killed) or, in the absence of the body, before [517] some mark (such as the horn of an animal). Bṛ. and Manu VIII. 25 state that the truth of the statements of witnesses should be examined by marking their tone, their change of colour, their eyes, their gestures, and their demeanour [518]. Texts like Śaṅkha-Likhita (q. by V. P. p. 124), Nār. IV. 193–196, Viṣṇu Dh. S. VIII. 18, Yāj. II. 13–15 and Kāt. 386 point out the actions and appearances of a party or witness that deposes falsely, viz. he appears restless, changes his place (i. e. moves from one spot to another), licks the corners of his lips, his forehead perspires, his face loses colour, he frequently coughs and heaves frequent sighs, he scratches the ground with his feet (toes), waves his hands and garment, his mouth becomes dry and his voice falters, he speaks incoherently, talks too much though not asked and does not reply straight to the questions asked and avoids meeting the eyes of the questioner. Such a witness may be looked upon as untrue and the king or judge should bring him under discipline (so that he will be afraid to lie). Merely on seeing these signs a witness was not to be punished or entirely disbelieved, since these signs raise only a probability of untruthfulness (as remarked by Mit. on Yāj. II. 15 and V. P. p. 124).

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517. सभान्तःस्थैस्तु वक्तव्यं साक्ष्यं नान्यत्र साक्षिभिः । सर्वसाक्ष्येष्वयं धर्मो ह्यन्यत्र स्थावरेषु तु ॥ अर्थस्योपरि वक्तव्यं तयोरपि विना क्वचित् । चतुष्पदेष्वयं धर्मो द्विपदस्थावरेषु च । वधं चप्राणिनां साक्ष्यं वादयेच्छवसंनिधौ । तदभावे तु चिह्नस्य नान्यथैव प्रवादयेत् ॥ कात्या. q. by स्मृतिच. II. p. 89, परा. मा. III. pp. 112–113, व्य. म. p. 41, व्य. प्र. p. 125. The reading शवसंनिधौ for शिव० is better. व्य. प्र. p. 124 quotes a long prose passage from शङ्खलिखित about the demeanour of witnesses. The मिता. on या. II. 15 remarks 'एतच्च दोषसम्भावनामात्रमुच्यते न दोषनिश्चयाय । स्वाभाविकनैमित्तिकविकारयोर्विवेकस्य दुर्ज्ञेयत्वात्.'

518. उपस्थिताः परीक्ष्याः स्युः स्वरवर्णेङ्गिताकृतिभिः । बृह. q. by स्मृतिच. II. p. 85, व्य. प्र. p. 124 . On कूटसाक्षी स विज्ञेयस्तं पापं विनयेद् भृशम् (नारद IV. 196), व्य. प्र. remarks विनयेत् शिक्षयेद्यथा कौटसाक्ष्याद् बिभेतीत्यर्थः ।...प्राकृतिक-वैकारिक-विकार-विवेकस्य दुःशकत्वात् संभावनामात्रेण च दण्डनस्यान्याय्यत्वादिति युक्तम् । (p. 124), Vide also मिता० on या. II. 15 cited above.

When there are many witnesses but they differ in their statements certain rules are laid down by Manu VIII. 73 (=Viṣṇu Dh. S. VIII. 39), Yāj. II. 78, Nār. IV. 229, Bṛ. (S. B. E. vol. 33 p. 303 v. 35), Kāt. (408). They are briefly these:[519] The statement of the majority of witnesses should be accepted, but if they are equally divided then the statement of those who are more pure (in character or more disinterested) should be accepted and if the meritorious are divided equally then those who are the best among them should be accepted as true. The Mit. on Yāj. II. 78 adds that if there is a conflict of testimony between the statements of a few but eminently qualified witnesses on the one hand and those of a larger number of ordinary witnesses, then the former should be accepted as Yāj. II. 72 requires i. e. it prefers quality to mere numbers. Kauṭ. III. 11 prescribes that when there is conflict in the oral evidence the decision should be according to the evidence of the majority of witnesses or of those who are pure in character or of those who are approved of by both sides as good witnesses or a mean should be drawn from their statements. Nār. IV. 160 and Kāt. 359 state[520] that if one out of the (three) witnesses attesting a document or out of (three) witnesses that are cited by a party deposes in a way contradictory to what is deposed to by the other two, then all the three become incompetent witnesses on account of contradiction. This has been interpreted by the Vyavahāramātṛkā (p. 326) to mean that where all witnesses are of equal status and there is a majority of only one favouring one side, then all the witnesses are incompetent and oral evidence is in that case futile for decision.

The important question is how much has to be proved by the party calling witnesses. Yāj. II. 79 (=Viṣṇu Dh. S. VIII. 38), Nār. II. 27 and Bṛ. (q. by Sm. C. II. 91) state the general rule that that party whose averments are supported in their entirety as true by the witnesses becomes successful, while that litigant

519. साक्षिद्वैधे प्रभूतास्ते ग्राह्याः साम्ये गुणान्विताः। गुणिद्वैधे क्रियायुक्तास्तत्साम्ये शुचिमत्तराः॥ बृह. q. by व्य. मा. p. 325, परा. मा. III. p. 116. The मिता० on या. II. 76 explains 'यदा पुनर्गुणिनां विप्रतिपत्तिस्तदा ये गुणवत्तमाः श्रुताध्ययनतपोऽनुष्ठान-धनपुत्रादिगुणसंपन्नास्तेषां वचनं ग्राह्यम्। यत्र तु गुणिनः कतिपये इतरे च बहवस्तत्रापि गुणिनामेव वचनं ग्राह्यम्। उभयानुमतः साक्षी भवत्येकोपि धर्मविदिति गुणातिशयस्य गुरुत्वात्।.'

520. साक्षिणां लिखितानां तु निर्दिष्टानां च वादिना। तेषामेकोऽन्यथावादी भेदात्सर्वे न साक्षिणः॥ कात्या. q. by अपरार्क p. 670, व्य. मा. p. 325, परा. मा. III. 116.

whose claim is declared by them to be false certainly loses[521]. Nār. IV. 232 and 234, Kāt. 396, 398 lay down[522] the rule that in civil disputes that are of a non-urgent nature (like recovery of debts), if witnesses depose to more or less (than what is averred in the plaint), then the claim is not established in its entirety; where the witnesses depose to more or less (than the claim affirmed by the party) the deposition of the witnesses should be considered as not taken down or it should be omitted (from consideration)[523]; the witnesses in such a case are not liable to fine; they may deserve to be fined if they do not depose (to what they know). Similarly Nār. IV. 233 and Kāt.[524] 399 say that where the depositions of witnesses are in conflict as to the place, the time, the property, the amount, the colour, the species (or caste), the form (or shape), the age (as stated in the pleading of a party), the depositions are to be regarded as good as not given at all. The rule amounts to this that any discrepancy between the essential details or particulars of a claim

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521. यत्राशेषप्रतिज्ञार्थः साक्षिभिः प्रतिपादितः । स जयी स्यादन्यथा तु साध्यार्थं न समाप्नुयात् ॥ बृह. q. by अपरार्क p. 678, स्मृतिच. II. p. 91, परा मा. III. 114.

522. ऋणादिषु विवादेषु स्थिरप्रायेषु निश्चितम् । ऊने वाप्यधिके वार्थे प्रोक्ते साध्यं न सिध्यति । ऊनाधिकं तु यत्र स्यात् तत्साक्ष्यं तत्र वर्जयेत् । साक्षी तत्र न दण्ड्यः स्यादब्रुवन् दण्डमर्हति ॥ कात्या. 396, 398 q. by व्य. मा. p. 312 and 318, अपरार्क p. 678, स्मृतिच. II. p. 90, व्यव. नि. p. 68.

523. The maxim (in Yāj. II. 20) that on proof a part of a claim the whole may be held to be proved (vide above n 431) applies only where the opponent totally denies every item of the claim of the plaintiff. This is a presumption and the king or judge is not to be blamed for acting upon it in case of total denial, as said by Gaut. XI. 23 and 32 'न्यायाधिगमे तर्कोऽभ्युपायः । ... तस्माद्राजाचार्यावनिन्द्यौ.' This text of Yāj. is apparently in conflict with Kāt. 473 (q. by Mit. on Yāj. II. 20) 'in claims containing several items, the creditor (or plaintiff) secures a decree for as much out of them as he is able to establish by means of witnesses'. These two verses are sought to be reconciled in various ways by the Mit. (on Yāj. II. 20), the Sm. C. II. pp. 120-121, Vyavahāra-mātṛkā pp.310-312 (where it criticizes the views of Yogloka), V. P., pp. 98-102. It is impossible for want of space to go into these interpretations. The Mit. says that Kāt. 473 applies to a case where the son or the like being ignorant of the debt contracted by his father or the like says 'I do not know' i. e. pleads ignorance. In that case he does not deny (he is not '*nihnava-vādin* but only *ajñānin*. The Vyavahāranirṇaya p. 68 explains Kāt. 473 in the same way and about 396 it adds that when he cites witnesses as supporting his entire claim and the witnesses depose only to a part of it or to more than he avers then his claim fails in its entirety but in sāhasa, theft and adultery it is otherwise.

524. देशं कालं धनं संख्यां रूपं जात्याकृती वयः । विसंवदेद्यत्र साक्ष्ये तदुक्तमपि दुर्बलम् ॥ कात्या. in अपरार्क p. 678 (reads ध्रुवं for धनं), स्मृतिच. II. p. 90.

made in the plaint (such as the time, place, number &c.) and the case made out in the depositions as to any of these essential particulars will have the same consequence as tendering no oral evidence. This rule was not followed to the letter and besides other means of proof could be resorted to, as stated by the Mit., the Vivādacandra and others[525]. Kauṭ. III. 11[526] states that when the witnesses depose to less than what is averred in the plaint, the plaintiff has to pay a fine (of a fifth part) on the excess and when they depose to more than the claim, the excess (held proved on the depositions) may be taken by the king.

In charges of adultery, heinous crimes (*sāhasa*) and theft the whole of the matter that is alleged may be held proved, when witnesses depose to only a part of the matter[527] (says Kāt. 397).

Nārada IV. 165 prescribes that a litigant[528] should not secretly approach a witness cited by his opponent, nor should he try to win him over (by bribes or threats) through another; if he does so, he would suffer the consequences of a losing party (*hīna*).

There were rules about the late production of evidence. It has been already shown how if a litigant adduces weak evidence, though strong evidence is available, he would not be allowed to rely on the latter after judgment is pronounced. It is said by Nār. I. 62 that when a law-suit has proceeded far enough (lit. has been cleansed or thrashed out), evidence such as a

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525. यत्र तु प्रतिज्ञातार्थस्य विस्मरणाद्विना भावाभावौ साक्षिणो न प्रतिपादयन्ति तत्र प्रमाणान्तरेण निर्णयः कार्यः । मिता० on या. II. 79 ; एतावता सन्देहे तूष्णींभावे वा न जानामि इति भाषणे वा किञ्चिदभिधाने वा यावदर्थं संशयस्तत्र क्रियान्तरेण निर्णय इत्यायाति । प्रकृताविरोध्यधिकाभिधाने जय एव । प्रकृतविरोध्यधिकाभिधाने भङ्ग एवेति । विवादचन्द्र pp. 131-132.

526. साक्षिणश्चेदभियोगादूनं ब्रूयुरतिरिक्तस्याभियोक्ता बन्धं दद्यात् । अतिरिक्तं वा ब्रूयुस्तदतिरिक्तं राजा हरेत् । अर्थशास्त्र III. 11.

527. साध्यार्थांशेऽपि गदिते साक्षिभिः सकलं भवेत् । स्त्रीसङ्गे साहसे चौर्ये यत्साध्यं परिकल्पितम् ॥ कात्या. q. by मिता. on या. II. 20, अपरार्क p. 678, स्मृतिच. II, p. 90.

528. The fact that a party requested a witness to give false evidence is, admissible evidence against such a party, it being an admission by conduct that the party has a bad case. Vide Cockburn C. J. in *Moriarty v. London Chatham and Dover Ry. Co.* L. R. 5 Q. B. p. 314 at p. 319 'if you can show that a plaintiff has been suborning false testimony and has endeavoured to have recourse to perjury, it is strong evidence that he knew perfectly well his cause was an unrighteous one'. Vide illustration *e* to section 8 of the Indian Evidence Act.

document or witnesses, would then become useless, if that evidence had not been announced before[529]. After a reply is filed by the defendant, the plaintiff has to give a list of his evidence i. e. documents or witnesses (Yāj. II. 7). The meaning briefly is as follows: If he does not do so, proceeds with the trial and does not call all necessary witnesses or produce all documents and the case is almost finished, but judgment is not pronounced, even then he would not be allowed to produce fresh evidence at that late stage. For if fresh evidence not previously disclosed were allowed to be given at that late stage, it would cause surprise to the defendant, who would then demand time for adducing evidence in rebuttal and then the plaintiff may again cite further evidence and this process is in danger of being carried on *ad infinitum*. If however witnesses were already cited but all were not examined (e. g. if ten witnesses were mentioned and only three examined) and the plaintiff found that the evidence of the few witnesses examined for him is contradictory or hostile, then he may be allowed to produce even at a late stage the remaining witnesses (who may be seven i. e. double the number of those already examined or who may be more respectable or purer in character). This proposition is contained in Yāj. II. 80 on which the Mitākṣarā remarks that even if witnesses are not mentioned in a list, but before judgment is pronounced other more reliable or respectable witnesses or double in number (and of the same status as) of those examined are available, they should be examined by the court even at a late stage. The rule is that as long as witnesses are available resort to ordeals should not be had. Yāj. II. 80 also has given rise to various interpretations. Vide Mit. and Aparārka on Yāj. II. 80, Sm. C. II. p. 94, V. P. p. 130-134. The Mit. thinks that the verse applies where the plaintiff or the party on whom lies the burden of proving a positive proposition finds that the witnesses produced by him are hostile or contradictory and that in such a case he may be allowed to cite other more respectable or more numerous witnesses to prove his proposition and to show that the first set of witnesses is false, while Aparārka holds that the verse says that when the party who has to prove his

529. निर्णिक्तव्यवहारेषु प्रमाणमफलं भवेत् । लिखितं साक्षिणो वापि पूर्वमावेदितं न चेत् ॥ नारद I. 62, निर्णिक्त does not mean निर्णीत, but शोधित (as व्य. म. p. 8 says) lit. washed out, cleansed (carried far). For detailed explanation of this verse vide my notes to व्य. म. pp. 78-80. The Madanaratna introduces Nār. I. 62 with the words. 'अयं च विपरीतसाक्ष्युपन्यासो व्यवहारसमाप्तेः प्राग्द्रष्टव्यः ।'.

case cites witnesses which the opponent feels are false, the opponent may produce more respectable or more numerous witnesses to depose to the contrary and he would thus prove the first set to be false. Aparārka relies on Kāt. (408) for this proposition[530]. It may be said that Aparārka's interpretation appears more natural. V. P. (p. 134) accepts Kātyāyana, but says that the interpretation of the Mit. (of Yāj. II. 80) is correct. Whatever view is accepted it leads to this that one set of witnesses not only may prove the truth of a party's case but also establish that another set of that party's witnesses are guilty of perjury.

Yāj. II. 82 provides that if a witness, having promised with other witnesses to depose to a state of things, denies at the time of his examination that he saw the matter in dispute, he should be fined eight times the amount that a defeated litigant would have to pay and a brāhmaṇa witness similarly guilty if unable to pay may be banished (or his house should be razed to the ground). Nār. IV. 197 says that such a person is worse than a false witness. Manu VIII. 107, Yāj. II. 76, and Kāt. (405) prescribe that if a person who has witnessed a transaction does not depose (i. e. remains silent) about it, though not suffering from disease or some other calamity, he should be made (after waiting for three fortnights) to pay the amount of the debt or other matter in dispute and also one-tenth thereof as fine to the king.

After the witnesses have deposed the chief justice and sabhyas have to consider the depositions of witnesses (as Kāt. 340 provides)[531]. The Court has to find out which set of witnesses are to be believed and what witnesses are perjured. Perjury entailed, according to dharmaśāstra works, both secular and other-worldly consequences. Āp. Dh. S. (II. 11. 29. 8–9) states: 'When a witness deposes falsely the king should fine him and, in addition, the witness incurs hell after death' and Gaut. provides (XIII. 7 and 23), 'a witness telling the truth goes to heaven, but falls into hell if he does the reverse and when he deposes falsely he is to be censured and fined'. Manu VIII. 118 states that witnesses depose falsely through covetousness,

530. यत्र वै भावितं कार्यं साक्षिभिर्वादिना भवेत् । प्रतिवादी यदा तत्र भावयेत्कार्यमन्यथा । बहुभिश्च कुलीनैर्वा पूर्वाः स्युः कूटसाक्षिणः । कात्या. 408 q. by अपरार्क p. 679, व्य. मा. p. 335, स्मृतिच. II. 94, व्य. प्र. p. 134.

531. साक्षिभिर्भाषितं वाक्यं सभ्यैः सह परीक्षयेत् । कात्या. 340 q. by मिता. on या. II. 80, अपरार्क p. 675, व्य. मा. p. 331.

wrong ideas, fear, friendship, sexual passion, wrath, ignorance and minority and prescribes (VIII. 120–122) varying fines for perjury arising from these several causes. Br. (S. B. E. vol. 33 p. 301 v. 21) regards[532] a corrupt judge, a perjured witness and the murderer of a brāhmaṇa as equally sinful. Yāj. II. 81 and Kāt. (407) prescribe[533] that the litigant who procures perjured evidence and the witnesses guilty of perjury should each be separately fined double the amount of the fine prescribed for defeat in various disputes and a brāhmaṇa (guilty of doing the same) should be banished from the country[534] (but not fined). But when a person (of any of the three castes other than brāhmaṇa) is frequently guilty of perjury he should be fined and given physical punishment (as cutting the tongue or death) and a similarly guilty brāhmaṇa should be fined and banished (or degraded by being carried naked through the streets or deprived of his house). The Mit. on Yāj. II. 81 says that when Manu prescribes (VIII. 380) that a brāhmaṇa guilty of a sin is not to be awarded death or corporal punishment and that he is to be banished with all his wealth, he refers to the brāhmaṇa being a first offender and not a confirmed one. Manu VIII. 108 says 'where within seven days from deposing in a cause a (serious or painful) disease or fire or the death of a relative befalls a witness, he should be (being held as a false witness owing to these portentous happenings) made to pay the debt in dispute to the opposite side and a fine to the king.' The Sm. C. (II. p. 94) explains that this applies to a witness who is the only one on a disputed matter such as a messenger and the king or judge should wait for seven days to see whether any of these calamities befalls that witness and then hold him to be perjured. Kāt. (410) contains[535] a similar rule, but he states that the king should wait one, two or three weeks or up to 45 days according to the value of the matter in dispute and the caste of the deponent. Manu VIII. 117 (= Viṣṇu Dh. S. VIII. 40) prescribes that in

532. कूटसभ्यः कूटसाक्षी ब्रह्महा च समाः स्मृताः । बृह. q. by व्य. प्र. p. 135.

533. येन कार्यस्य लोभेन निर्दिष्टाः कूटसाक्षिणः । गृहीत्वा तस्य सर्वस्वं कुर्यान्निर्विषयं ततः ॥ कात्या. 407 q. by अपरार्क p. 672, स्मृतिच. II. p. 93.

534. The मिता० explains विवासन in या. II. 82 as follows 'विवासनं च नग्नीकरणगृहभङ्गदेशनिर्वासनलक्षणं विषयानुसारेण द्रष्टव्यम् । इतरेषां त्वधनगुणद्रव्यदण्ड-दानासम्भवे स्वजात्युचितकर्मकरणनिगडबन्धनकारागृहप्रवेशादि द्रष्टव्यम् ।.' Vide मिता० on या. II. 81 for three meanings of विवासयेत्.

535. सप्ताहात्तु प्रतीयेत यत्र साक्ष्यनृतं वदेत् । रोगोऽग्निर्ज्ञातिमरणं द्विसप्ताहत्रिसप्त वा । चत्वारिंशके वापि द्रव्यजात्यादिभेदतः ॥ कात्या. 410 q. by स. वि. p. 149.

whatever lawsuit it is established that witnesses perjured themselves, the judge should hear it again (from the beginning) or if the suit has ended he should set aside the decision and examine it again.

Gaut. 13. 24–25, Vas. 16. 36, Manu VIII. 104, Yāj. II. 83, Viṣṇu Dh. S. VIII. 15 prescribe that a witness may depose falsely in a cause when, if he were to speak the truth, a person of the four varṇas is liable to suffer the sentence of death. Manu VIII. 105–106, Yāj. II. 83, Viṣṇu Dh. S. VIII. 16 prescribe that as a penance for the falsehood a witness of the three higher castes may offer three oblations of boiled rice to the goddess of speech (Sarasvatī) or he may offer into fire clarified butter with the mantras called Kūṣmāṇḍa (Vāj. S. XX. 14-16 or Tai Ā. X. 3-5), or with the three verses beginning with 'yaddevā devaheḍanam' or with the verse sacred to Varuṇa (viz. Ṛg. I. 24. 15, 'uduttamam varuṇa') or with three verses of which waters' are the deity (Ṛg. X. 9. 1–3 'āpo hi ṣṭhā)'. Viṣṇu Dh. S. VIII. 17 adds that a śūdra guilty of perjury in the above case may by way of expiation feed ten cows for one day. It is strange that the dharmaśāstra works should permit perjury to save a culprit from being sentenced to death. Probably popular sentiment of old standing allowing the speaking of falsehood in certain cases was responsible for this. In the Mahābhārata frequent reference is made to the permission to speak untruth in ordinary life when one's own life or another's life is in imminent danger. Vide Śānti[536] 45. 35, 109. 19. It is stated in Śānti 165. 30 that speaking falsely is not a sin in five cases viz. in jest, to women, at the time of (i. e. in bringing about) a marriage, for the preservation of great wealth and for one's life. Vas. 16. 36 mentions those five occasions somewhat differently. Vide Manu VIII. 112 also for a similar rule. But so old a sage as Gaut. (23. 29) implies that he disapproves of this sentiment[537], when he states, 'according to some falsehood entails no fault (i. e. no expiation need be performed) in (bringing about or breaking promises made at)

536. प्राणत्राणेऽनृतं वाच्यमात्मनो वा परस्य च। गुर्वर्थे स्त्रीषु चैव स्याद्विवाहकरणेषु च॥ शान्ति 34. 25; न नर्मयुक्तमनृतं हिनस्ति न स्त्रीषु राजन्न विवाहकाले। न गुर्वर्थं नात्मनो जीवितार्थे पञ्चानृतान्याहुरपातकानि॥ शान्ति 165. 30; उद्वाहकाले रतिसंप्रयोगे प्राणात्यये सर्वधनापहारे। विप्रस्य चार्थे ह्यनृतं वदेयुः पञ्चानृतान्याहुरपातकानि॥ वसिष्ठ 16. 36. In आदि 82. 16 we have the verse न नर्म etc. as 'प्राणात्यये सर्वधनापहारे पञ्चा°'

537. विवाहमैथुननर्मार्तसंयोगेष्वदोषमेकेऽनृतम्। गौ. 23. 29.

marriage, in sexual intercourse, in jest and in giving relief to one distressed'. Vide Gṛ. R. pp. 507–508 quoting Hārīta Dharmasūtra on the same subject and mentioning four kinds of falsehood such as that by a witness, that in transactions of sale &c.

Nār. (IV. 235–236) states that when through[538] the carelessness of the creditor (who dies) there is no document nor witness to prove a debt and the defendant denies it, then one of three methods (of proof) may be resorted to, viz. *codanā pratikālam* (dunning the debtor each time to repay), *yuktileśa* (putting forth arguments) and *śapatha* (special oaths and ordeals)[538a]. Kāt. (233 q. by Sm. C. II. p. 52 and Par. M. III. 91) has a similar verse. *Yukti* according to Nārada IV. 238 means[539] 'the creditor should follow (the debtor) by arguments and by himself remembering and by reminding the debtor of the time, the place, the relation (subsisting between the two)'. Others interpret *yukti* differently, that is, it means 'logical reasoning' Kāt. (214) defines[540] 'yukti' as 'the ascertainment or knowledge of a *liṅga*' (i. e. a sign that leads on to an inference).

538. प्रमादाद्धनिनो यत्र न स्याल्लेख्यं न साक्षिणः । अर्थं चापह्नुते वादी तत्रोक्तस्त्रिविधो विधिः ॥ चोदना प्रतिकालं च युक्तिलेशस्तथैव च । तृतीयः शपथः प्रोक्तस्तैरेनं साधयेत् क्रमात् ॥ अभीक्ष्णं चोद्यमानो यः प्रतिहन्यान्न तद्वचः । त्रिश्चतुः पञ्चकृत्वो वा परतोऽर्थं स दापयेत् ॥ नारद IV. 235–237; अर्थिनाऽभ्यर्थितो यस्तु विघातं न प्रयोजयेत् । त्रिचतुःपञ्चकृत्वो वा परतस्तद्दृणी भवेत् । कात्या. 386 q. by व्य. प्र. p. 168, which explains नारद as 'चोदनाया धनदानादिविषयकप्रेरणाया अप्रतिकालोऽप्रतिषेधः । सोऽपि पञ्चममस्य ऋणादिसम्बन्धी न स्यात्तदा चोद्यमान एव निराकुर्यात् निराकरणादस्य पक्षस्यानेन सम्बन्ध इत्यर्थापत्तिविधयाऽनुमानविधया वा ऋणादिसम्बन्धं साधयन् भवति प्रमाणम् ।'.

538a. The printed text of Nār. IV. 236 reads चोदना प्रतिकालं च as separate words. The Sm. C. II, p. 52 explains that as meaning 'pressing or urging the debtor three, four or five times in the presence of third persons without the debtor protesting against the demand'. The Madanaratna and V. P. p. 168 appear to read 'चोदनाप्रतिकालश्च (equal to चोदना+अप्रतिकाल) and interpret 'if there is no denial or protest (by the debtor) when the creditor frequently demands the debt, then the court may presume that he is a debtor'. The Madanaratna explains 'चोदनाप्रतिकालः बहुकृत्वो धनं मे देहीति प्रेरणाया अप्रतिकालः अनिराकरणम्.'

539. चोदनाप्रतिघाते तु युक्तिलेशैस्तमन्वियात् । देशकालार्थसम्बन्धपरिमाणक्रियादिभिः ॥ नारद IV. 238; स्मृतिच॰ II. p. 52 explains युक्तिलेश as 'अमुष्मिन् देशे अमुष्मिन् काले अमुनार्थसंबन्धेन यत्परिमितं तत्कर्मार्थमृणं गृहीतं त्वयेत्यादि-रित्युपायः ।'.

540. लिङ्गोद्देशस्तु युक्तिः स्याद्विद्यानीह विचक्षणः । कात्या. (214) quoted by परा. मा. III. 91, व्यवहारसार p. 43, व्य. प्र. p. 167 which explains लिङ्गस्य अविनाभाविनोऽव्यभिचारिण उल्काहस्तत्वादेः उद्देशो निश्चयः तेन चाभियुक्तस्य ग्रहणम्.

It is stated by Bṛhaspati that *anumāna* (inference[541] or presumption), as a means of deciding a law suit, is of three kinds, but it is inferior to witnesses (vide note 433 above). Vyāsa (q. by Sm. C. II. p. 95) states that *anumāna* is the same as *hetu* and *tarka*. V. P. (p. 167) remarks that (long continued) possession and the frequent urging by the creditor both lead to the inference of title and the taking of a loan respectively and are therefore to be comprehended under *yukti* according to the definition of Kātyāyana. Yet by popular usage *yukti* is restricted to presumptions arising from certain circumstances on the analogy of the maxim of 'goballvarda' explained below under 'steya'. Yukti therefore means circumstantial evidence from which an inference may be drawn about a fact in issue in a judical poceeding. Āp. Dh.[542] S. II. 11. 29. 6 says that in case of doubt (judges) should decide from signs (i. e. by inference) or divine proof (ordeals). Vas. 19. 39 mentions the view of some sages that one who is found armed or wounded or in possession of the booty (stolen) may be declared to be (the thief or offender). Manu IX. 270 (= Matsya 227. 166) requires the just king not to condemn to death one accused of theft unless his guilt is proved as certain by proof that the accused had in his possession the articles stolen and tools for theft (for house-breaking). 'An adulterer is proved[543] to be so by being caught in such acts as playing with the hair of another's wife, an incendiary by being caught with a firebrand in his hand (near the house set on fire), a murderer by being found (near the murdered man) armed and a thief when caught with some of the articles stolen in his possession'—say Śaṅkha-Likhita[544].

541. अनुमानं त्रिधा प्रोक्तं नवधा दैविकी क्रिया। बृह q by परा. मा. III. p 87; साक्षिलेख्यानुमानं तु मानुषी त्रिविधा क्रिया। घटाद्या धर्मजान्ता च दैवी नवविधा स्मृता॥ बृहस्पति q. by स्मृतिच॰ II. p. 50, व्यव. नि. p 73 and मदनरत्न (ms) which latter remarks 'अत्र युक्तेः पृथगनिर्देशोऽनुमानेऽन्तर्भावात् ।'. व्यव. नि. p 73 quotes बृहस्पति as अनुमानं तु द्विविधं and explains युक्तिः कैश्चिद्विशेषणैर्विशिष्टा स्वस्वहेतुः, सा तु कार्यस्य क्षिलक्षणादिकमव्यभिचाराद्नुमापयति, अनुपपद्यमाना वा कल्पयतीत्यनुमानं द्विविधमिति युक्तरेवोक्तं।

542. सन्देहे लिङ्गतो दैवेनेति विचित्य। आप. ध. II. 11. 29. 6.

543. केशाकेशिग्रहणात्पारजायिक उल्काहस्तोऽग्निदः शस्त्रपाणिर्घातुको लोप्त्रहस्तश्चौरः। शङ्खलिखित q. by परा. मा. III. 119, स्मृतिच. II. p 95, व्य. म. p. 168.

544. Compare sec. 114 of the Indian Evidence Act which lays down how a court is to draw presumptions of fact from the common course of natural events in relation to the facts of the case before it, illustration (a) to which is 'the court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession'.

Kauṭ.[545] IV. 12 and Yāj. II. 283 similarly say that adultery may be inferred from (the man and woman) being caught in the act of dalliance with the hair or from the signs left (such as marks of nails or teeth on the lips, cheek &c.) after carnal enjoyment or from the admission of the woman concerned (or of both). Nār. (IV. 172–175) declares that there are six kinds of disputes in which the indications (or circumstances) themselves serve as witnesses and lead to a conclusion without the testimony of witnesses viz. one found with a fire-brand in his hand (near the scene of arson) may be inferred to be the incendiary, one armed[546] (found near the scene of murder) as the murderer, one caught dallying with the hair of another's wife as an adulterer, one with a spade in his hand near a breached embankment as the person who caused the breach in it and one armed with an axe as the feller of a tree, a person guilty of an assault may be inferred to be so from visible signs (such as his club or sword being smeared with blood). But Nār. IV. 176 gives the warning that in such cases it is necessary to be careful in arriving at a conclusion, since a person in order to bring into trouble another whom he hates may create marks of injury on himself. Kāt. (337–338) further provides[547] that where one litigant proves as against his opponent (such as a debtor) either the offer of a bribe, or the effacing of the means of recognition (such as effacing one's signature on a document) or holding out temptations (to the witnesses or *sabhyas*) or the concealment of his wealth (to avoid its being attached in execution of a decree), there the original claim (such as a debt) may be presumed to be proved even if he (the opponent) denies his liability.

545. केशाकेशिकं संग्रहणम् । उपलिङ्गनाद्वा शरीरोपभोगानां तज्जातेभ्यः स्त्रीवचनाद्वा । कौटिलीय IV. 12.

546. Best on 'Evidence' (12th ed. 1922) sec. 294 cites as an illustration of circumstantial evidence the fact of one armed being regarded as the probable murderer in certain cases. Compare Wills on 'Circumstantial evidence' (7th ed. of 1937 English and Indian combined) p. 145 'Amongst the most forcible of presumptive indications may be mentioned all attempts to pollute or disturb the current of truth or justice, or to prevent a fair or impartial trial by endeavours to intimidate, suborn, bribe or otherwise tamper with the prosecutor, or the witnesses or the officers of justice, or by the concealment, suppression, destruction, alteration of any article of real evidence'.

547. दानं प्रज्ञापनाभेदः संप्रलोभक्रिया च या । विसापनयनं चैव हेतवो हि विभावकाः । एषामन्यतमो यत्र वादिना भाविता भवेत् । मूलक्रिया तु तत्र स्याद् भाविते वादिनिह्नवे ॥ कात्या. (337–338) q. by व्य. प्र. p. 169, विवादचन्द्र p. 188 (only the first), which reads विसापनयनम्.

Judges often repeat from the Bench the words 'witnesses may lie, but circumstances cannot'. But this so-called maxim is often dangerous. Circumstantial evidence leads to conclusions that are in several instances false. The ancient Hindu lawyers were quite aware of the dangers of drawing inferences from circumstantial evidence. Nārada's warning has already been mentioned (p. 356). Kauṭ.[548] (in IV. 8) remarks: 'even one not a thief may by chance be on the way by which thieves pass and one meeting thieves is seen to be apprehended as a thief because he is mixed up in dress, arms and articles carried with the thieves or is found near the articles stolen, just as Māṇḍavya though not a thief declared himself to be a thief for fear of being subjected to torture; therefore (the king) should punish one only after thorough examination'. Māṇḍavya's is a leading case on the danger of relying on purely circumstantial evidence. Bṛhaspati[549] also remarks that 'a decision should not be arrived at merely by relying on the words of texts; for, if judges come to a conclusion without applying careful reasoning, loss of dharma results; a thief is held to be not a thief and a good man is held to be a wicked one in a judical proceeding (not arrived at with proper reasoning). The sage Māṇḍavya was held to be a thief on account of the decision being arrived at without proper reasoning'[550].

The 9th Act of the Mṛcchakaṭika is a standing literary condemnation of conclusions about guilt drawn from circumstantial evidence and of how judicial procedure is vitiated (of *vyavahāra-duṣṭatā*, as the author says in Act I).

Nār. IV. 289 provides that when even circumstantial evidence and presumptions therefrom do not enable the court to arrive at a decision, the judge should press the litigant with

548. दृश्यते ह्यचोरोपि चोरमार्गे यदृच्छया संनिपाते चोरवेषशस्त्रभाण्डसामान्येन गृह्यमाणो दृष्टः, चोरभाण्डस्योपवासेन वा यथा हि माण्डव्यः कर्मक्लेशभयादचोरश्चोरोऽस्मीति ब्रुवाणः । तस्मात्समाप्तकरणं नियमयेत् । कौटिल्य IV. 8.

549. केवलं शास्त्रमाश्रित्य न कर्तव्यो हि निर्णयः । युक्तिहीनविचारे हि धर्महानिः प्रजायते । चौरोऽचौरः साध्वसाधुर्जायते व्यवहारतः । युक्तिं विना विचारेण माण्डव्यश्चौरतां गतः ॥ बृह. q. by व्य. प्र. pp. 13-14, परा. मा. III. p. 39. The स्मृतिच० II. p. 25 quotes a verse of नारद (I. 42) 'यात्यचोरोपि चोरत्वं चोरश्चायात्यचोरताम् । अचोरश्चोरतां प्राप्तो माण्डव्यो व्यवहारतः ॥'. Vide note 332 above for other references to माण्डव्य.

550. Wills' work 'Principles of circumstantial evidence' (English and Indian ed. combined, 7th ed. pp 39-48) contains a lucid exposition of the value and defects of purely circumstantial evidence.

śapathas (oaths and ordeals) according to the place, time and strength of the litigant, such as fire, water, his spiritual merit and others. Manu VIII. 109 also says that when there are no witnesses the truth would have to be found out by *śapathas*. Divine proof is called *daivikīkriyā* or *samayakriyā* (Viṣṇu Dh. S. IX. 1). Some writers make a distinction between *śapathas* (special oaths) and ordeals (*divyas*), others (like Manu VIII. 109–114, Nār. IV. 239) do not. For example, the Vivādacandra quotes Nār. IV. 247 'when there is no witness in a dispute between litigants, there the judge should decide by means of ordeals[551] and various *śapathas*'. Acc. to the Mit. (on Yāj. II. 96) and S. V. (p. 106) both special oaths and ordeals are divine proof (*divya pramāṇa*), but in disputes of small value *śapathas* (oaths) were generally employed, while ordeals were resorted to only in serious disputes or crimes. The Mit. (on Yāj. II. 96), the V. May. p. 46 and V. P. (p. 170) state that ordeals are those that generally end in immediate decision of the dispute, while *śapathas* take time for decision (because after the oath the king has to wait for a week or more to see whether a calamity befalls the person taking the special oath). Vyāsa quoted by Sm. C. II. p. 96 employs the word *śapathas* for both special oaths (taken as to one's 'satya') and ordeals like balance. Śaṅkha-Likhita state that divine proofs are the balance, eating poison, entering fire, holding a piece of (hot) iron, offering one's merit acquired by sacrifices and charity and the king should make him undergo other śapathas[552]. Bṛhaspati says that where documents or witnesses do not lead to a certain decision or where inference from circumstantial evidence also is confusing, there the matter is to be decided by divine proof[553].

Special oaths were taken not only in judicial proceedings, but also in ordinary dealings to clinch one's assertion or to clear one's character or reputation. Nār. (IV. 243–244) refers to

551. यत्र साक्षी न विद्येत विवादे वदतां नृणाम्। तत्र दिव्यैः परीक्षेत शपथैश्च पृथग्विधैः ॥ नारद IV. 247 q. by विवादचन्द्र p. 112 and स. वि. p. 106. अर्थानुरूपाः शपथाः स्मृताः सत्यघटादयः ॥ व्यास in स्मृतिच II. 96.

552. तत्र दिव्यं नाम तुलाधारणं विषाशनमग्निप्रवेशो लोहधारणमिष्टापूर्तप्रदानमन्यांश्च शपथान् कारयेत्। शङ्खलिखित q. in परा. मा. III. p. 151, स्मृतिच॰ II. p. 96, अपरार्क p. 694. The व्यव. नि. p. 140 reads विषाशनमपां प्रवेशो and इष्टापूर्तपरप्रदान॰.

553. लिखिते साक्षिवादे च सन्दिग्धे निर्णयो न जायते। अनुमाने च सम्भ्रान्ते तत्र दिव्यं विशोधनम् ॥ बृह. q. by व्य. मा. p. 333, अपरार्क p. 629, विवादचन्द्र p. 111 (reads प्रकल्पयेत् as the last word).

the special oaths taken for clearing themselves by Vasiṣṭha when he was suspected to be a *yātudhāna* (a demon or sorcerer) and by the seven sages together with Indra, who (sages) were suspected to have stolen lotus fibres (by each among them[554]). Manu VIII. 110 also speaks of the *śapatha* taken by Vasiṣṭha before Sudās, son of Pijavana (when the sage was charged by Viśvāmitra with the offence of devouring his own hundred sons). Nārada (IV. 243) refers to Ṛg. VII. 104. 15–16 in the first of which Vasiṣṭha made the imprecation,[555] 'May I die this very day if I am a *yātudhāna* or if I injured the life of a human being! May he who falsely addressed me as yātudhāna be deprived of his ten valiant sons'! Manu VIII. 110 also refers to the same hymn[556]. Manu VIII. 113 (= Nār. IV. 199) referred to above (p. 343) states the various oaths to be taken or administered to the parties according to their respective castes. Manu VIII. 114 further provides for special oaths for litigants by touching the heads of their sons and wives. That śapatha taken by *satya* was common in very ancient times appears from Pāṇ. V. 4. 66 (*satyād-aśapathe*).[557] Nār. IV. 249 prescribes that in charges of grave offences ordeals may be resorted to and *śapathas* in matters of small moment. Nār. IV. 248 mentions 'truth, horses and arms, kine, grains and gold, the feet of (the images of) gods and the ancestors, acts of charity and good deeds (*sukṛta*) are to be employed in śapathas as declared by Manu.' Bṛhaspati[558] enumerates the special

554. In the Anuśāsanaparva 95. 13–35 it is narrated that each of the seven sages suspected the others of the theft of lotus-fibres and that they cleared themselves by taking oaths. Indra is said to have taken an oath when he was the subject of suspicion in relation to Ahalyā. Vide Best on 'Evidence' (12th ed. of 1922) pp. 42–45 sections 56–59 for the employment of oaths in all ancient societies in courts as well as outside, for the forms and sanctions of oaths and for the arguments urged against their use.

555. अद्या मुरीय यदि यातुधानो अस्मि यदि वायुस्ततप पूरुषस्य । अधा स वीरैर्दश-भिर्वि यूया यो मा मोघं यातुधानेत्याह ॥ ऋ. VII. 104. 15. The बृहद्देवता (VI. 33–34) refers to the story thus: पञ्चदश्यां तु सूक्तस्य अष्टम्यां चैव वारुणिः । दुःखशोकपरीतात्मा शपते विलपन्निव ॥ हते पुत्रशते तस्मिन् वसिष्ठो दुःखितस्तदा । रक्षोभूतेन शापात्तु सुदा-सेनेति वै श्रुतिः ॥

556. The story of king Kalmāṣapāda cursed to be a demon by Śaktı, eldest son of Vasiṣṭha, who then devoured one hundred sons of Vasiṣṭha is narrated in Ādiparva 176 (cr. ed. 166).

557. On सत्यादशपथे, the काशिका says: सत्यशब्दोऽनृतप्रतिपक्षवचनः । कश्चि-च्छपथं च वर्तते सत्येन शापयेऽहमिति । तस्यायं प्रतिषेधः । सत्याकरोति भाण्डं वणिक् । मयैतत्क्रेतव्यमिति तथ्यं करोतीत्यर्थः । अशपथ इति किम् । सत्यं करोति ब्राह्मणः ।

558. सत्यवाहनशस्त्राणि गोबीजकनकानि च । देवब्राह्मणपादाश्च पुत्रदारशिरांसि च । एते तु शपथाः प्रोक्ताः स्वल्पेऽर्थे सुकराः सदा ॥ बृह. in स्मृतिच. II. p. 96, परा. मा. III. p. 151.

oaths mentioned by Manu and Nār. and adds that they are to be employed in small matters (civil and criminal). The Viṣṇu Dh. S. (IX. 5–10) prescribes that when the litigant is a śūdra and the dispute relates to a matter worth less than one, two, three, four or five *kṛṣṇalas* he should swear respectively by holding in his hand *dūrvā* grass, sesame, silver, gold or earth taken from ploughed land, that (IX. 11–13) beyond that value various ordeals may be offered and that oaths with similar objects in the hands may be offered to vaiśyas, kṣatriyas and brāhmaṇas when the value of the subject matter is double, three times or four times of the value in the case of a śūdra. Manu VIII. 111 gives the admonition that a wise man should not make a false oath, because by so doing he incurs loss (of reputation) here and after death (by falling into Hell). Yāj. II. 236 prescribes a fine of 100 *paṇas* for one who takes an improper or profane oath[559].

The benefit of doubt is to be given, according to modern ideas on the administration of justice, to the accused. This principle was put forward several centuries before Christ by Āp. Dh. S. II. 5. 11. 2 'the king should not punish when there is a doubt' (about a man's guilt[560]).

559. The Mit. explains : यस्त्वयुक्तं मातरं गमिष्यामीत्येवं शपथं करोति ।

560. न च सन्देहे दण्डं कुर्यात् । आप. ध. सू. II. 5. 11. 2.

CHAPTER XIV

ORDEALS

A brief history of ordeals may be set out here. Ṛg. I. 158. 4–5, wherein[561] the sage Dīrghatamas, son of Ucatha, prays that the fire of faggots heaped tenfold may not burn him and that the rivers in which he was thrown bound hand and foot may not engulf him, are regarded by some as a reference to the ordeal of fire and water. Yet in those verses there is probably no reference to ordeals, but to the cruel treatment of Dīrghatamas by *dāsas* headed by Traitana. Ṛg. III. 53. 22 also, where it[562] is said 'he heats the axe (or acc. to Sāyaṇa 'just as the tree is injured by contact with the axe &c.')', does not contain a clear or certain reference to the ordeal of holding the heated axe. Atharvaveda[563] II. 12 is held by several Western scholars to contain a reference to the fire ordeal. This also is far from certain, though verse 8 may lend some support to that view[564]. The Pañcaviṁśa (or Tāṇḍya) Brāhmaṇa 14. 6. 6 refers[565] to the story of Vatsa, who was abused by his step-brother that the former was the son of a śūdra woman, against which Vatsa protested, urged that he was a brāhmaṇa, entered fire to prove the truth of his assertion and came out of fire unscathed. This is referred to by Manu VIII. 116. This is probably the earliest

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561. मा मामेधो दशतयश्चितो धाक् प्र यद्वां बद्धस्त्मनि खादति क्षाम् ॥ न मा गरन्नद्यो मातृतमा दासा यदीं सुसमुब्धमवाधुः । ऋ. I. 158. 4–5.

562. परशुं चिद्वि तपति शिम्बलं चिद्वि वृश्चति । उखा चिदिन्द्र येषन्ती प्रयस्ता फेनमस्यति ॥ ऋ. III. 53. 22.

563. आ दधामि ते पदं समिद्धे जातवेदसि । अग्निः शरीरं वेवेष्ट्वसुं वागपि गच्छतु ॥ अथर्ववेद II. 12. 8.

564. Vide Proceedings of the American Oriental Society, vol. XIII pp. CCXXI–XXVI where, after referring to the views of Ludwig (III. p. 445), Weber (Indische Studien XIII. p. 164) and Zimmer (Altindische Leben, p. 184) about the mention of the fire ordeal in the above hymn, it is sought to be proved that the hymn refers to re-establishing a soiled reputation and reliance is placed on the Kauśikasūtra (47. 25 ff) which does not treat it as a fire ordeal hymn.

565. वत्सश्च वै मेधातिथिश्च काण्वावास्तां तं वत्सं मेधातिथिराक्रोशदब्राह्मणोऽसि शूद्रापुत्र इति । सोऽब्रवीदृतेनाग्निं व्ययाव यतरो नौ ब्रह्मीयानिति । वात्सेन वत्सो व्यैन्मैधातिथेन मेधातिथिस्तस्य न लोम चनौषत् । ताण्ड्यमहाब्राह्मण 14. 6. 6.

and clearest reference in ancient Sanskrit Literature to the fire ordeal. Next comes the reference to holding in the hand the heated head of an axe by a person accused of theft to prove his innocence contained in the Chāndogya[566] Upaniṣad VI. 16. 1. Āp. Dh. S. II. 11. 29. 6 refers to inference and divine proof (quoted above n. 542). In another place (II. 5. 11. 3) Āpastamba states that after carefully considering (the charge before him) by means of divine proof and questioning (of witnesses) the king should set about awarding punishment. Śaṅkha-Likhita (n. 552) name four ordeals, viz. those of balance, poison, water and holding red-hot iron[567]. Manu VIII. 114 mentions only two viz. the holding of fire (i. e. red-hot iron) in the hand or plunging in water, but Nār. IV. 251 states that Manu declared five kinds of ordeals. Yāj. II. 95, Viṣṇu Dh. S. IX–XIV and Nār. IV. 252 mention five viz. balance, fire, water, poison and *kośa* (consecrated water). Nārada, however, knew two more viz. *taptamāṣa* (IV. 343) and *taṇḍula* (IV. 337). Bṛhaspati (S. B. E. vol. 33 p. 315 verses 4 and 5) and Pitāmaha speak of nine (Aparārka pp. 628, 694 respectively).

Yāj. II. 95–113, Viṣṇu Dh. S. IX–XIV, Nār. IV. 239–348, Kāt. 411–461, Śukra IV. 5. 233–270 treat of the several ordeals. Pitāmaha contained, as the quotations from the digests show, the most elaborate treatment. That ordeals had attained great vogue in the early centuries of the Christian era is shown by the Mṛcchakaṭika Act IX. 43 (where the ordeals of poison, water, balance and fire are expressly named) and by Bāṇa who mentions the same four in Kādambarī, para 47[568]. Among the digests and commentaries the Mitākṣarā, the Smṛticandrikā, the Divyatattva of Raghunandana, the Vyavahāramayūkha and the Vyavahāraprakāśa contain the most elaborate treatment of ordeals[569].

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566. पुरुषं सोम्योत हस्तगृहीतमानयन्त्यपहार्षीत् स्तेयमकार्षीत् परशुमस्मै तपतेति स यदि तस्य कर्ता भवति तत एवानृतमात्मानं कुरुते सोऽनृताभिसन्धोऽनृतेनात्मानमन्तर्धाय परशुं तप्तं प्रतिगृह्णाति स दह्यतेऽथ हन्यते। छान्दोग्य VI. 16. 1.

567. घटाद्या धर्मजान्त्यन्ता दैवी नवविधा क्रिया। बृह. q. by अपरार्क 628; घटोऽग्निरुदकं चैव विषं कोशश्च पञ्चमः। षष्ठं च तण्डुलाः प्रोक्ताः सप्तमं तप्तमाषकम्। अष्टमं फालमित्युक्तं नवमं धर्मजं भवेत्। पितामह q. by अपरार्क p. 694; the same verses are quoted as बृहस्पति's in दिव्यतत्त्व p. 574 and स्मृ. च. p. 45.

568. वनकारिणां वारिप्रवेशः ... ... व्रतिनामग्निधारणं ग्रहाणां तुलारोहणमपत्योद्दये विषग्राहिः। कादम्बरी para 47..

569. Those interested in the further study of ordeals may consult my translation of and notes on the Vyavahāramayūkha.

Divya is defined as 'that which decides a matter (in dispute) not determined by human means of proof' (V. Mayūkha) or 'that which decides what cannot be or is not to be decided by human means of proof' (Divyatattva[570] p. 574). Medhātithi on Manu VIII. 116 discusses the question how ordeals can be relied upon for the discovery of truth. The objection is raised that fire and water are natural forces that act in a uniform way and are not intelligent beings which may change their minds by an appeal to them. Therefore, the objector says, ordeals and oaths are like magic and are only meant to frighten the parties into telling the truth. It is further objected that thieves may (by some trick) not be burnt in the fire ordeal and good men are seen to suffer burns. The reply is: the usefulness of ordeals cannot be negatived by these examples of failures, as they are not frequent and as even direct perception and inference sometimes lead to uncertain results. No one, however, says that these latter should not be relied upon. Just as one relies on witnesses in deciding a matter (who may for aught one knows be telling lies), so reliance can be placed on ordeals. Where there is failure in case of ordeals, it must be held to be due to the results of the performer's actions in past lives. The general rule as stated by Yāj. II. 22, Nār. II. 29, IV. 239, Bṛhaspati[571], Kāt. (217) and Pitāmaha is that ordeals were to be resorted to only if no human evidence (witnesses, documents, possession) or circumstantial evidence was available. Kāt. (218-219) prescribes that[572] if one party relies on human means of proof and the other on divine proof, the king (or judge) is to accept human means and not divine and that if human means of proof reach (i. e. are able to establish) only a part of the allegations (in the plaint), then human means should be accepted and no divine modes of proof, even though they may be complete (i.e. completely cover all allegations). When Nār. II. 30 (= IV. 241) states that divine means of proof are to be resorted to when a transaction takes place in a forest, in

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570. तत्र मानुषप्रमाणानिर्णेयस्यापि निर्णायकं यत्तद्दिव्यमिति लोकप्रसिद्धम्। अपिना मानुषप्रमाणसत्त्वेऽपि यत्र चैव धटाद्यङ्गीकारस्तत्राप्येतत्प्रवर्ततीति सूचितम्। दिव्यतत्त्व p. 574.

571. प्रमाणहीने वादे तु निर्दिष्टा दैविकी क्रिया। बृह. in व्य. म. p. 169; संभवे साक्षिणां प्राज्ञो दैविकीं वर्जयेत् क्रियाम्। कात्या. in स्मृतिच० II. p. 51; यस्मिन् यस्मिन् विवादे तु साक्षिणां नास्ति सम्भवः। साहसेषु विशेषेण तत्र दिव्यानि दापयेत्॥ पितामह in स्मृतिच० II. p. 95.

572. यद्येको मानुषीं ब्रूयादन्यो ब्रूयात्तु दैविकीम्। मानुषीं तत्र गृह्णीयान्न तु दैवीं क्रियां नृपः॥ यद्येकदेशव्याप्तापि क्रिया विद्येत मानुषी। सा ग्राह्या न तु पूर्णापि दैविकी वदतां नृणाम्॥ कात्या० in मिता० on या. II. 22 and व्य. मा. p. 315.

a lonely place, at night, inside a house, in cases of *sāhasa* and when a deposit is denied, or when Kāt. (230) prescribes that trial by ordeals is to be resorted to in the case of persons accused of committing *sāhasa* in secret (i.e. by wearing masks &c.),[573] those words only apply where it is impossible to have human evidence. Kāt. (229) states an exception to this viz. when the dispute[574] investigated is about *sāhasa* or about assault or abuse and defamation and in causes that spring from the use of force there is an option that witnesses or divine proof may be resorted to. Nār. IV. 242 states that divine proof could be resorted to when the chastity of women was in question, in theft and *sāhasa* and in all cases of the denial of monetary liability. Sītā's ordeal of fire at once comes to mind as an illustration of Nārada's rule. Bṛhaspati[575] and Pitāmaha say that in disputes about immoveable property divine proof should be avoided, which does not forbid *divya* altogether, but only where the evidence of neighbours or of a document is available and that in the latter case even if the defendant offers to pay a fine if he fails by the divine proof, *divya* is not to be resorted to. The ordinary rule was that ordeals were to be administered to the defendant[576] (Kāt. 411 = Viṣṇu Dh. S. IX. 21). But Yāj. II. 96 gives an option that any one of the two litigants may by mutual agreement undergo an ordeal and the other should agree to pay on defeat a fine or undergo physical punishment. This means that human proof is adduced to prove a positive proposition, that divine proof may be resorted to prove a negative proposition as well (e. g. a defendant denying the claim for a debt may prove by *divya* that he did not borrow a loan). Making an offer to pay a fine or undergo corporal punishment is said to be being *śirṣakastha*[577] or *śirastha*

573. गूढसाहसिकानां तु मातं दिव्यैः परीक्षणम् । कात्या. q. by मिता. on या. II. 22, स्मृतिच॰ II. p. 51.

574. प्रक्रान्ते साहसे वादे पारुष्ये दण्डवाचिके । बलोद्भूतेषु कार्येषु साक्षिणो दिव्यमेव वा । कात्या. in मिता on या II. 22, अपरार्क p. 629, स्मृतिच॰ II. p. 51.

575. स्थावरेषु विवादेषु दिव्यानि परिवर्जयेत् । पितामह in मिता. on या. II. 22, स्मृतिच॰ II. p. 53 ; पत्रकारकृतं महीवादे निषिद्धा दैविकी क्रिया । बृह. q. by अपरार्क p. 629, स्मृतिच॰ II. p. 53.

576. न कश्चिदभियोक्तारं दिव्येषु विनियोजयेत् । अभियुक्ताय दातव्यं दिव्यं दिव्यविशारदैः ॥ कात्या. q. by अपरार्क p. 695, परा. मा. III. 152, व्य. प्र. p. 172.

577. On शीर्षकस्थेऽभियोक्तारि (या. II. 95) the मिता. explains 'शीर्षकं शिरो व्यवहारस्य चतुर्थः पादो जयपराजयलक्षणस्तेन च दण्डो लक्ष्यते तत्र तिष्ठतीति शीर्षकस्थः तत्पयुक्तदण्डभागित्यर्थः ।'. *Śiras* (head) indicates the fourth stage of a law-suit viz. success or defeat and since fine is imposed on the defeated party, it indicates fine or corporal punishment.

(in Yāj. 95, Viṣṇu Dh. S. IX. 20, 22, Pitāmaha, Nār. IV. 257, Kāt. 412–413). Yāj. II. 95 prescribes that the ordeals of balance, fire, poison and water were to be prescribed in disputes of great value and not elsewhere and in II. 99 he says that all claims above 1000 paṇas (of copper) are to be regarded as of great value, but in charges of treason and of the committing of any one of the five grave sins (*mahāpātakas*) any one of these four ordeals may be resorted to without regard to value and without any offer to pay fine on defeat. So also these four ordeals were to be offered to the defendant where the plaintiff offered to pay a fine on defeat. The ordeal of *kośa* was allowed in all claims whether of high value or low value or whether the plaintiff offered to pay a fine on defeat or not.

Yāj. II. 98 states that the ordeal of balance should be given to women, a minor (under 16), a very old person (above eighty years), the blind, the cripple, brāhmaṇas and the diseased; the fire ordeal (i. e. heated ploughshare and heated māṣa) to kṣatriyas, water ordeal to vaiśyas, poison to śūdras. Nār. IV. 335 assigns ordeals to the different varṇas similarly. Nār. IV. 256 prescribes that ordeals should not be undergone by those who are observing a vow, who are much distressed or who are performing austerities, and by women. Pitāmaha quoted by Mit. (on Yāj. II. 98) adds minors and old persons to these. The Sm. C. II. p. 103 explains this as referring to the ordeals of fire, poison and water only. Another Smṛti (q. by Mit. on Yāj. II. 98) prescribes that the ordeals of balance and kośamay be offered to women, minors and the others mentioned above. There is in all these rules a spirit of tolerance, kindness and concern for the weaknesses of mankind. Kāt. (423) holds[578] that persons of the higher castes who are cowherds, traders, artisans, bards, domestic servants and usurers should be given ordeals as if they were śūdras. Kāt. (422) allows all ordeals to members of all castes, except that brāhmaṇas are not to undergo the poison ordeal. Kāt. (424–426) prescribes that the ordeal of fire should not be offered to blacksmiths or those who are leprous nor of water to those who ply boats or who suffer from difficulty in breathing or cough, nor poison to those who are experts in incantations and *yogic* practices or who suffer from (excess

578. गोरक्षकान्वाणिजकांस्तथा कारुकुशीलवान् । प्रेष्यान्वार्धुषिकांश्चैव ग्राहयेच्छूद्रवद् द्विजान् ॥ कात्या. q. by अपरार्क p. 698, स. वि. p. 180.

of) bile or phlegm, nor *kośa* to those who are drunkards, to persons fond of women, to gamblers and to those who are atheists. Viṣṇu Dh. S. IX. 25, 29 and Nār. IV. 255, 332 contain similar provisions. Kāt. (427-430) further provides that no ordeal should be allowed to be performed personally by the following persons, viz. those charged with the murder of their father, mother, a brāhmaṇa, their teacher, a minor, a woman and the king; those guilty of the (five) grave sins; particularly those that are atheists; those who wear (or subsist by) peculiar sect marks; great rogues; those who are experts in incantations and *yoga* practices; those who are the progeny of unions of persons of different varṇas; those who repeatedly engage in sin; in the case of these the king should offer ordeals to good men appointed by them on their behalf and if such good men are not willing then they should appoint their own relatives. Śaṅkha-Likhita also refer to the appointment of friends or relatives as representatives (Aparārka p. 842)[579]. Kāt. (433)[580] lays down the following rather remarkable provision, viz. when untouchables, men of lowest castes, slaves, *mlecchas* and those born of mixed unions in the reverse order of the castes are guilty of crimes, the determination of their guilt (by the above mentioned ordeals) should not be made by the king; he should indicate such ordeals as are in vogue among them. The Sm. C. and Par. M. say that this applies

579. असाक्षिप्रणिहिते दिव्यम् । अथवा मित्रैः सज्जनैरात्मानं वा शोधयेद्देव । स चेद्दण्ड्योऽर्थिनां चार्थं दापयेत् । शङ्खलिखित q. by अपरार्क p. 842.

580. अस्पृश्याधमदासानां म्लेच्छानां पापकारिणाम् । प्रातिलोम्यप्रसूतानां निश्चयो न तु राजनि । तत्प्रसिद्धानि दिव्यानि संशये तेषु निर्दिशेत् ॥ कात्या. q. by मिता. on या. II. 99, स्मृतिच० II. p. 104, परा. मा. III. p. 161; 'तत्प्रसिद्धानि सर्पघटादीनि' व्यवहारतत्त्व p. 579; व्य. प्र. 180 'तत्प्रसिद्धानि सर्पघटादीनि इति स्मृतितत्त्वे'. In the Gadag Inscription of Vikramāditya VI dated 1098 A. D. (E. I. vol. 15 p. 348 at p. 360 there is this passage 'we handle boiling water, *we strike with the hand a great snake placed in a jar* or we may well mount the balance'. In I. A. vol. 19 p. 242 at p. 246 it is stated in an inscription dated 1208 A. D. of the Mahāmaṇḍaleśvara Kārtavīrya IV that Candrikā (or Candaladevī), the queen of Lakṣmīdhara of the Raṭṭas of Sugandhavarti (Saundatti) was a pativratā and got success by *ghaṭasarpa* 'भाति श्लाघ्यगुणा पतिव्रततया देवी चिरं चन्द्रिका संप्राप्त घटसर्पजातविजयं लक्ष्मीधरप्रेयसी'. The Bombay Gazetteer vol. I part 2. p. 556 n. 5 gives a quotation from the Asiatic Researches vol. I. where the ordeal of putting a ring or coin in a vessel in which a snake has been already placed and asking a person to take it out is mentioned. Vide also Report of South Indian Epigraphy for 1924 para 66 for the ordeal of dipping the fingers in boiling ghee or oil.

only when they cannot secure relatives or other persons appointed by them to undergo the usual ordeals on their behalf. The Vyavahāratattva (p. 579) explains that the ordeals referred to among mlecchas and others are the snake in the jar and the like. This seems to have consisted in taking out a ring or coin with the hand from a jar in which a snake was placed; if there was no snake-bite or no effect even if the snake bit, the person was declared innocent. Vide note 580. Yāj. II. 97 and Nār. IV. 268, 320 prescribe that all ordeals are to be administered by the chief justice in the morning at sunrise or in the forenoon in the presence of the king, the sabhyas and brāhmaṇas. The Mit. adds that a Sunday is the proper day according to the usage of respectable people (*śiṣṭas*). Pitāmaha specially provides that the water ordeal should be administered in the noon and poison in the last watch of the night (Mit. on Yāj. II. 97). Certain seasons and months were either appropriate or inappropriate to certain ordeals e. g. Nār. IV. 254 states that the fire ordeal should be given in the rainy season, balance in the winter (*śiśira*), water in summer, poison when the season is cool. Nār. IV. 259 prohibits water ordeal in the cold season, fire in summer, poison in the rainy season and balance while the wind blows violently. The Mit. (on Yāj. II. 97) and Par. M. III. 162 quote Pitāmaha to the effect that the months of Caitra, Vaiśākha and Mārgaśīrṣa are common to all ordeals, *kośa* and balance may be administered in all months.

As regards the place, Pitāmaha prescribes that ordeals are to be administered by the king or the judge appointed by the king in the presence of learned brāhmaṇas and the public (or the ministers)[581]. Kāt. (434–35 and 437) provides:[582] 'ordeals should be administered in some well-known temple in the case of men accused of grave sins and near the royal gate in the case

581. प्रत्यक्षं दापयेद्दिव्यं राजा वाधिकृतोपि वा । ब्राह्मणानां श्रुतवतां प्रकृतीनां तथैव च ॥ पितामह in परा. मा. III. 164, स. वि. p. 183.

582. इन्द्रस्थानेऽभिशस्तानां महापातकिनां नृणाम् । नृपद्रोहे प्रवृत्तानां राजद्वारे प्रयोजयेत् ॥ प्रातिलोम्यप्रसूतानां दिव्यं देयं चतुष्पथे । अतोऽन्येषु सभामध्ये दिव्यं देयं विदुर्बुधाः ॥ अदेशकालदत्तानि बहिर्वासकृतानि च । व्यभिचारं सदार्थेषु कुर्वन्तीह न संशयः ॥ कात्या. in मिता. (on या. II. 99), परा. मा. III. 163, स्मृतिच० II. p. 105, स. वि. p. 183. 'इन्द्रस्थानं प्रख्यातदेवतायतनम्' स्मृतिच० II. p. 104 and स. वि. p. 183; 'इन्द्रस्य, इन्द्रध्वजस्थाने' दिव्यतत्त्व p. 576; 'इन्द्रध्वजपूजास्थाने' व्य. म. p. 182. For the festival of the banner of Indra, vide H. of Dh. vol. II. p. 398, 825–826. On व्यभिचारं &c. the स्मृतिच० says 'विहितदेशाद्यनादरे दिव्यप्रामाण्यहानिर्भवतीत्याह स एव'.

of those charged with treason; in a public place where four roads meet in the case of those born of mixed unions in the reverse order of castes, in cases other than these in the hall of justice. When ordeals are administered in an improper place or at an improper time and when they are performed outside human habitation (in a lonely place) they fail as to the matter in hand (i. e. they cease to be decisive). Nār. IV. 265 prescribes that the balance should be planted in the hall of justice or at the royal gate or near a temple or where four roads meet.

The procedure common to all ordeals and described in the Mit. on Yāj. II. 97 and 99, the V. May. pp. 52–55, V.P. pp. 183–186 (all relying on Pitāmaha) and Vyavahāra-nirṇaya pp. 148–53 (relying on Prajāpati, Pitāmaha, Bṛ.) is briefly as follows :—In ordeals the chief justice is to do every thing at the king's bidding as the *adhvaryu* priest does in all sacrifices. He should observe a fast and the *śodhya* (person undergoing the ordeal to clear himself) is also to do the same. Both are to bathe in the morning and the śodhya was to have his wet clothes on. The Chief Judge is to invoke the gods to the accompaniment of music and to offer flowers, sandal-wood paste and incense. He should fold his hands, face the east and invoke Dharma to be present at the ordeal (Dharma being the principal deity in ordeals) and assign places to Indra, Yama, Varuṇa and Kubera in the four principal quarters from the east and to Agni and other guardians of quarters in the corners of the principal quarters. He is to contemplate on the eight deities of the eight quarters as having different colours (viz. Indra as yellow, Yama as dark &c.). He is to assign the eight Vasus (repeating their names) to the south of Indra, the twelve Ādityas (repeating their names) between Indra and Īśāna (i. e. between east and north-east), assign a place to the eleven Rudras to the west of Agni, assign a place to the seven Mother goddesses between Yama and Nirṛti (between south and south-west), assign a place to Gaṇeśa to the north of Nirṛti, to the Maruts (seven) to the north of Varuṇa; to the north of the balance (or the place of other ordeals) he should invoke Durgā. All these deities are to be invoked with appropriate Vedic mantras (set out in V. May.). He should offer the several items of worship from *arghya* (water offered by way of honour) to ornament to Dharma (as the principal deity) and then to the subsidiary deities from Indra to Durgā (according to appropriateness) and then sandalwood paste, flowers, incense, lamp and *naivedya* to the deities from Dharma to Durgā. The

flowers for Dharma are to be red. Up to this is the work of the Chief Justice. Sacrificial priests should offer into fire in the four quarters 108 oblations of clarified butter, boiled rice and fuel sticks with syllable *Om* and the *Gāyatrī* and with '*Om*' and '*svāhā*' at the end of each. Having written down on a leaf the subject matter for which the party is undergoing ordeal the leaf should be placed on the head of the śodhya with the *mantra*,[583] 'the sun, the moon, the wind, fire, heaven and earth, waters, the heart, Yama, day and night, the two twilights and Dharma know (see or mark) the deeds of men'.

The several ordeals will now be briefly described.

First comes *tulā* or *dhaṭa* (balance). A sacrificial tree (such as *khadira* or *udumbara*) should be cut to the accompaniment of vedic mantras (employed in making a sacrificial post). Two wooden posts made of that tree should support a transverse beam (called *akṣa*). The posts should be fixed in the ground, the part above ground being four cubits and that below being two cubits. This frame should face the east (i. e. the posts must be in the south and north). Then the beam of the balance was to be made from the same tree and was to be suspended from the transverse beam of the frame by means of a hook. Three iron rings were to be fastened to the beam of the balance, two at the end and one in the middle for suspending the balance from the transverse beam by means of a chain or string. Two scales were to be suspended at the two ends of the beam by hooks and strings from the iron rings fixed at the ends of the beam. On the two sides of the balance there should be two arches in which the scales should move and which should be ten aṅgulas higher than the balance. There should be two perpendicular pendants made of clay hanging down from the arches and touching the upper surface of the balance. In the pan to the west the *śodhya* should be placed and weighed against clay, bricks and stones placed in the other pan. Then traders or goldsmiths or braziers should examine the balance and bring it on a level with the two pendants hanging down from the arches and examine the perfect horizontality of the

583. The मन्त्र is आदित्यचन्द्रावनिलोऽनलश्च द्यौर्भूमिरापो हृदयं यमश्च । अहश्च रात्रिश्च उभे च सन्ध्ये धर्मोपि जानाति नरस्य वृत्तम् ॥ आदिपर्व 74. 30. It is to be noted that पितामह quoted by the मिता० regards this verse of the आदिपर्व as a मन्त्र and Prajāpati quoted by the Vyavahāranirṇaya p. 153 does the same. Compare for a similar verse Manu VIII. 86.

beam of the balance by spilling a little water on the beam. When the person sitting in one pan is equal in weight to the materials (clay &c.) in the other, a line should be drawn with chalk by the experts on the arch (to show the exact position of the pans). Then the man is made to get down from the pan and he is to invoke the balance as stated in Yāj. II. 101-102, 'O balance, you are the abode of truth, you were created by the gods for this purpose, declare the truth, free me from this (cloud of) suspicion. Mother! if I am a sinner then take me lower, if I am pure take me upwards'. The person is then to hear exhortations about the result of untruth after putting the writing on his head (vide Nār. IV. 276 and Viṣṇu Dh. S. X. 9), then he is again to be placed in the pan to the accompaniment of invocations (Nār. IV. 278-279, Viṣṇu Dh. S. X. 10-11). A worthy brāhmaṇa learned in astronomy is to calculate the time of five *palas* [584] or *vināḍīs*. Then his weight is again to be marked. If the person goes up (i. e. is found lighter than what he formerly weighed) he is declared innocent (acc. to the com. on Nār. IV. 283, V. Mayūkha p. 60, Dīpakalikā on Yāj. II. 102); if he weighs the same or goes down (i. e. weighs more) he is guilty. Then the person concerned is to distribute gifts to the judge, the brāhmaṇas and sacrificial priests and take leave of the deities invoked. Bṛhaspati (SBE vol. 33 p. 317 v. 19) states that he who weighs the same should be weighed once more. If the pan or the beam or the hooks break or the ropes give way owing to some visible cause then the procedure was to be repeated, but if the breaking is due to an unseen cause or accident, the person was to be declared guilty.

The ordeal of fire is as follows :—Nine circles with cowdung are to be drawn from west to east, they being meant for Agni, Varuṇa, Vāyu, Yama, Indra, Kubera, Soma, Savitṛ and all gods. Each circle was to be 16 *aṅgulas* in diameter and the space between two circles was to be 16 aṅgulas. In each circle kuśa grass was to be spread and the person to be tested was to plant his feet on them ; ghee was to be offered into fire 108 times. A blacksmith by birth should heat in fire a ball of iron weighing 50 *palas* (16 palas [585] in the case of a weak man) and eight

584. A vināḍī is the time required for reciting 60 long syllables and 60 vināḍis make one ghaṭikā. So five vināḍis will be equal to two minutes.

585. A *pala* weighed 320 *guñjās* according to the Līlāvati (I. 4). Acc. to Divyatattva (p. 608) 20 palas were equal to 66 *tolakas*, five māṣas and 4 guñjās, which, while accepting the view that a pala is equal to 320 guñjās, gives the rather modern measurement into tolakas (*tolas*).

aṅgulas in length till it becomes red-hot and emits sparks. Then all the details described above ending with the placing of the writing on the head of the *śodhya* are to be gone through by the judge and the fire (in the red-hot piece) is to be invoked with several mantras (such as Yāj. II. 104[586] and Viṣṇu Dh. S. XI. 11–12). The *śodhya* should stand in the first circle facing the east. Having made red marks on all sores of the hands of the śodhya on which grains of rice have been rubbed, he (the judge) should place seven leaves of the *aśvattha* tree on them and also grains of rice and curds and should fasten round them threads. Then the judge should carry the red-hot iron piece by means of a pair of tongs and place it in the hands of the śodhya (that are covered with leaves). Then the śodhya holding in both his hands the red-hot piece should walk from the first to the eighth circle not hurriedly but slowly and at ease. Having reached the 8th[587] circle he should throw the red-hot iron piece on to the 9th circle. Then the judge should rub on the hands of the śodhya rice grains and when the latter shows no hesitation at the rubbing and no injury on his hand at the end of the day he is declared to be innocent. Kāt. (441) and Yāj. II. 107 provide that if the red-hot piece falls earlier (i. e. before reaching the 8th circle) or there is a doubt (whether his hands are injured or not) or if he loses his footing or is burnt elsewhere than on the hands he should again undergo the ordeal.

The ordeal of water as described in the smṛtis and digests is rather complicated. The Sm. C. (II. p. 116) remarks that[588] as the ordeals of water and poison had gone out of vogue (in its day) it passes over the procedure of these and takes up the description of *kośa* ordeal after the fire ordeal. Having gone to a reservoir of water the judge should get erected on its bank a *toraṇa* (an arch) as high as the ear of the *śodhya* on an even and cowdunged plot. He should offer worship to Varuṇa (Lord of waters), to a bow of middling size and to three arrows (the points of which are made not of iron but of bamboo) with sandal

586. Before the red-hot iron is placed on his hands the शोध्य repeats 'त्वमग्ने सर्वभूतानामन्तश्चरसि पावक। साक्षिवत्पुण्यपापेभ्यो ब्रूहि सत्यं कवे मम ॥ या. II. 104; the आदिपर्व 5. 27. (cr. ed. 5. 22) has the same verse (but reads पुण्यपापेषु सत्यं ब्रूहि कवे वचः).

587. अथ सप्ताश्वत्थपर्णास्तरितं षोडशपलमग्निवर्णं लोहपिण्डमञ्जलिनादाय सप्त मर्यादां गच्छेत्। शङ्खलिखित in स्मृतिच॰ II. p. 112, व्य. प्र. p. 196.

588. अथ जलविषयोरुत्सन्नानुष्ठानत्वात् तद्विधिमनाख्याय कोशविधिरुच्यते । स्मृतिच॰ II. p. 116.

paste, incense, lamp, flowers. A target is to be fixed at the distance of 150 *hastas* (cubits) from the toraṇa. A post of some sacred tree is to be fixed in the water and a strong man of one of the three higher castes free from love or hatred for the *śodhya* is to stand in navel-deep water facing the east and holding the post. Then the judge is to make the *śodhya* stand in water, invoke the deities from Dharma to Durgā, perform all the rites up to the placing of the writing (embodying the accusation) on the head of the *śodhya*. A kṣatriya or a brāhmaṇa following the profession of arms who is of a pure heart and has observed a fast should discharge, while standing near the root of the toraṇa, three arrows at the target. The *śodhya* should invoke the water with the mantra, 'O Varuṇa ! save me by means of truth' (Yāj. II. 108)[589]. Then a young but swift man should run to the spot where the second arrow struck the ground, and stand there holding that arrow in his hand. Another swift man stands at the root of the toraṇa whence the arrows were discharged. Then the judge claps his hands thrice. At the third clap the śodhya dives into the water seizing the thighs of the man standing in water and at the same time the swift man near the arch runs at his best speed to the place where the second arrow fell. The other man who holds the arrow starts off the moment the first runner reaches him and comes running to the arch. If he does not see the śodhya or sees only his head (i. e. the back of the head) when he reaches the arch the śodhya is to be declared innocent ; but if he sees other parts of the head (such as the ear or nose &c.) or if the *śodhya* floats to some part other than the one where he dived he is not innocent.

Ordeal of poison. After worshipping Maheśvara with incense[590] and the like (mentioned above) poison placed before the image of Maheśvara is to be administered in the presence of (images of)

589. Several smṛtis give different mantras to be recited by the judge in invoking the waters (so that there is an option). Vide Viṣṇu Dh. S. XII. 7-8 (tvamambhaḥ &c.), Pitāmaha (toya tvam prāṇinām prāṇāḥ &c.) quoted by the Mit. on Yāj. II. 108, Nār. IV. 316-317 (satyānṛtavibhāgasya &c.). Kālikāpurāṇa q. by V. P. p. 206. The mantra in Śaṅkha-Likhita (q. by Madanaratna and V. P. p. 206) was सदसच्च त्वमेव वरुण । उभयोः प्रतिष्ठितस्त्वयि सत्यं स्थिरं देव वरुण । त्वमेव तद्ब्रूहि वरेण्य तद्वाद्विशस्व ।. The Ms of मदनरत्न reads तद्वाद्विशस्वा ।

590. It is most appropriate that Siva is to be worshipped in the poison ordeal, since, according to the Paurānic mythology, he swallowed the Hālāhala poison produced at the churning of the sea. 960 *yavas* make one *pala*.

gods and brāhmaṇas. The poison to be selected is *śārṅga* (derived from the śṛṅga plant) or *vatsanābha* (aconite) or *haimavata* (Viṣṇu Dh. S. XIII. 3, Nār. IV. 322 &c.). Pitāmaha (q. by Aparārka p. 712) treats the three as distinct, while Yāj. II. 111 appears to prescribe śārṅga growing on the Himālaya as the poison to be selected. Viṣṇu Dh. S. (XIII. 2–3) also does the same. In the rains the quantity of poison is to be six *yavas* in weight, in summer five, in hemanta (and śiśira) seven or eight and in śarad (autumn) less than the latter (i. e. six yavas acc. to Mit. and three acc. to V. Mayūkha). Poison is to be administered in the last watch of the night and never in the noon or afternoon or twilight; it was to be mixed with ghee thirty times as much. It may be administered to any one except a brāhmaṇa. Viṣṇu Dh. S. XIII. 6–7 and Nār. IV. 325 are mantras with which the judge invokes poison and Yāj. II. 110 is the mantra which the *śodhya* repeats before taking poison viz. 'O poison! thou art the son of Brahmā, thou art firm in the duty of (deciding) the truth. Save me from this accusation and be like nectar to me by truth (if I be innocent)'. Nār. IV. 326 states that then the śodhya should eat the poison, should be kept in shade without food and guarded the rest of the day and if he discloses no signs of the effect of poison should be declared innocent. If the dose of poison is large, the Mit. (on Yāj. II. 111) says that when the śodhya shows no change till five hundred clappings of hands then he should be declared to be innocent and medical treatment should be resorted to. Pitāmaha says that, in order to prevent fraud, for three or five nights before the ordeal the intending śodhya should be kept under the supervision of the king's servants and an examination should be made whether medicines, incantations or precious stones that are antidotes are secretly employed.

The ordeal of kośa. The śodhya is made to worship the stern deities (such as Rudra, Durgā, Āditya) with sandal wood paste, flowers etc. and made to bathe the images with water. Then the judge asks the śodhya to invoke the consecrated water with the mantra '*satyena mābhirakṣa*' (Yāj. II. 108) and makes him drink three handfuls (*prasṛti*) of that water. Pitāmaha gives some special rules. The water may be that of the bath of the image of that god of which the *śodhya* is a devotee or if he holds all images in equal esteem, then of the Sun. In the case of Durgā it is her spike (śūla) that is to be bathed, the orb in the case of the Sun and the weapons in the case of other

gods. The water of the bath of Durgā is to be offered as ordeal to thieves and those who live by the profession of arms and the water of the bath of the Sun is not to be given to brāhmaṇas. In other divyas the result is declared immediately, but in the kośa ordeal there is a period of waiting which is more or less according to the value of the claim or the gravity of the offence. Acc. to Yāj. II. 113, Viṣṇu Dh. S. 14. 4-5, Nār. IV. 330, if within fourteen days of taking the kośa ordeal the śodhya does not suffer any serious calamity due to the king's action or the act of God or does not fall seriously ill or does not lose by death his son or wife or other dear relative or his wealth, then he is to be declared innocent. Insignificant loss or illness did not matter as it is unavoidable in this world. Besides, the calamity or illness must not be one common to several people (such as an epidemic). Drinking holy water (*kośapāna*) was employed not only as an ordeal for proving innocence, but it was resorted to also for assuring another about one's good will and future honesty (vide Rājat. V. 326).

Ordeal of Taṇḍula (rice grains). It is to be administered in charges of theft or disputes about debts or other monetary matters. On the preceding day grains of rice should be made white (i. e. husked). The judge should perform all the rites on the previous day. The rice grains should be placed in an earthen vessel, exposed to the sun, water of the bath of (the image of) the sun should be poured over them in the vessel and the vessel should be kept in that state the whole night. The next day in the morning the *śodhya* should swallow thrice the rice grains. He should be made to spit on a *pippala* or birch leaf. If blood is found mixed in his saliva he should be declared guilty.

Ordeal of taptamāṣa (heated piece of gold). In a vessel of copper, iron or clay sixteen aṅgulas in diameter and four aṅgulas deep, the judge should get twenty palas of ghee and oil poured and heat it to the boiling point. Then the judge should cast into it a golden piece weighing one māṣaka (equal to five *guñjās*). The *śodhya* should take out the heated golden piece with the thumb and the next two fingers. If he does not jerk his fingers or there is no scalded skin he should be declared to be innocent. There is another method. Cow's ghee should be poured in a vessel of gold, silver, copper, iron or clay and it should be heated to the boiling point so that when a green leaf is cast into it the sound '*churu*' is produced. Into the

boiling ghee he should cast a golden, silver, copper or iron seal ring once washed. Then he should invoke the ghee with this mantra 'O ghee! thou art the holiest thing in sacrifices, thou art nectar; burn him (the śodhya) if he is a sinner; be cool as ice if he be innocent.' Then the śodhya takes out the ring from the boiling ghee. If there are no marks of scalding on his forefinger he is innocent.

Ordeal by phāla (ploughshare). This is described by Bṛhaspati (S. B. E. vol. 33 p. 318 verse 28) quoted by the Sm. C. II. p. 119, V. P. p. 218 and others. A ploughshare of iron weighing twelve *palas*, eight aṅgulas long and four broad should be made red-hot and the thief should be made to lick it once with his tongue. If he is not burnt he establishes his innocence; if otherwise, he is guilty. The Vyavahāratattva (p. 608) mentions that acc. to Maithila writers the thief meant is a cattle-lifter. The ordeal mentioned in the Chāndogya Upaniṣad is a *phāla divya*.

Ordeal of dharma (i. e. of the images or pictures of Dharma). Men guilty of causing bodily injuries or who have monetary disputes or who desire to undergo this ordeal as an expiation for sins should undergo this. A silver image of Dharma and a leaden or iron one of Adharma should be prepared or the judge should draw on a birch leaf or a piece of cloth figures or pictures of Dharma and Adharma respectively white and dark in colour. Having sprinkled *pañcagavya* over the two, he should worship them with white and dark flowers respectively. The images or figures should then be placed in two balls of clay or cowdung. The two balls should be then placed inside a new earthen vessel in a cowdunged spot in the presence of images of gods and in the presence of brāhmaṇas. Then the judge should perform all the rites from the invocation of Dharma to the placing of the writing on the head. The śodhya should repeat the words 'if I am free from guilt may (the image or picture of) Dharma come to my hands'. Saying this he should take out one ball from the vessel. If he takes out Dharma he is innocent. This resembles the drawing of lots.

Ordeals played their part in the judicial systems of most ancient countries. In early England handling of red-hot iron and plunging the hand in boiling water were the commonest ordeals. In the ordeal of water sinking was a sign of innocence and floating of guilt. Stephens (History of Criminal Law of England, vol. I. p. 73) suggests that the ordeal of water

was a form of honourable suicide. The Assize of Northampton (1176 A. D.) prescribed the ordeal of water for murder, robbery, theft, forgery and arson, but ordeals were abolished in England from 1215 A. D. (*ibid.* vol. I. p. 300). In India[591] there is epigraphic and other evidence to show that ordeals were resorted to till the end of the 18th century and rarely even later. In the Kittur Pillar Inscription (J. B. B. R. A. S. vol. IX. pp. 307–309) dated in Kaliyuga era 4289 in the reign of Kadamba king Jayakeśideva there is a description of the *phūladivya* which was administered by mutual agreement on Sunday to an ācārya Śivaśakti who had a dispute about a plot of land with Kalyāṇaśakti the ācārya of another shrine and whose hand was examined the next day after he underwent the ordeal by all the bankers of the *agrahāra* village Degāve. In the Silimpur stone slab Inscription of the time of Jayapāladeva (E. I. vol. XIII. p. 283 at p. 291–292) there is a reference to the ordeal of

591. In Beal's 'Buddhist Records of the Western world,' vol. I. p. 84 (also Watters on Yuan Chwang's travels vol. I. p. 172) four kinds of ordeals are mentioned as in vogue, viz. by water, fire, weight and poison. In the water ordeal the accused is placed in a sack connected with a stone vessel and thrown into deep water. If the man sinks and the stone floats he is guilty; if the man floats and the stone sinks then he is pronounced innocent. The ordeal by fire is: they heat a plate of iron and make the accused sit on it and again place his feet on it and apply it to the palms of his hands; moreover he is made to pass his tongue over it. If no scar results he is innocent; if there are scars his guilt is proved. In the ordeal by weight a man and a stone are placed evenly in a balance. If the accused is innocent the stone rises in the balance; if he is guilty the man rises and the stone falls. In the ordeal of poison an incision is made in the right thigh of a ram, all sorts of poison with a portion of the food of the accused are placed in the incised wound. If the man is guilty poison takes effect and the animal dies; if he is innocent the poison has no effect and the animal survives. It will be noticed that these descriptions of the four ordeals do not agree in several respects with the descriptions in the smṛtis and digests, while the poison ordeal in Beal has nothing in common with the smṛti poison ordeal. Alberuni (tr. by Sachau, vol. II. pp. 159–160) probably speaks of poison ordeal in the words 'the accused person is invited to drink *bish* called brāhmaṇa' (he is probably referring to poison being called the offspring of Brahmā in Yāj. II. 110 and Nār. IV. 325). In the ordeal of water the accused is simply thrown into a deep and rapidly flowing river or a deep well and he was held innocent if he was not drowned. He describes the *kośa* ordeal and balance ordeal accurately, but states that if the man has spoken the truth he weighs more than before. He describes correctly *taptamāṣa* (gold piece taken from boiling clarified butter) and also the ordeal of the red-hot iron piece.

balance[592] (about 1200 A. D.). The Visnukundin king Mādhavavarman in the 7th century A. D. (Journal of Andhra Historical Research Society, vol. VI pp. 17, 20, 24) is said to have carried out various ordeals (*avasita-vividha-divyaḥ*). The E. C. vol. III (Māṇḍyā Taluka Ins. No. 79 p. 47) records that a dispute having arisen about the boundaries of land bestowed by means of a copperplate grant by the Hoysaḷa king Vīra-Narasiṁhadeva, one Kannaya, a descendant of the original donee, performed an ordeal by holding consecrated food in the presence of the God Hoysaleśvara in the capital Dorasamudra and came out successful. E. C. IV. p. 27 (Yelandur Jagir Ins. No. 2 page 27, about 1580 A. D.) is a charter to potters whose headmen underwent the ordeal of dipping their hands in boiling ghee as against barbers and washermen who denied that potters could pare their toe nails and tie on upper cloth (at the time of marriage). In the Indian Antiquary for 1931 (vol. 60 p. 179) an extract is cited from the Archæological Report for Travancore 1930 which describes the balance ordeal undergone by a brāhmaṇa 18 years before and seen by the writer himself in the temple of Śiva at Calicut. For the ordeal of red-hot ploughshare in the case of thefts, vide Report of South Indian Epigraphy for 1907, para. 27.

In the times of the Maratha kings ordeals were resorted to. For example, in 'Peshwa's Diaries' vol. 2 p. 150 (in 1764–65 A. D.) mention is made of *taptakaṭāha* ordeal (i. e. taking out a coin or ring or a piece of metal from a large vessel in which either water or oil or ghee had been brought to the boiling point) in which the person undergoing it had his right hand burnt up to the middle joints of the fingers and was declared to be false. In a Marathi publication called 'Vatanpatreṁ, nivāḍapatreṁ &c.' pp. 46–56 edited by P. V. Mavjee and D. B. Parasnis (1909) there is a document which describes in great detail the ordeal of fire undergone in connection with a dispute about the office and emoluments of Deshpande in the district of Kalyan in *śake* 1666 Pauṣa bright 11th, Thursday (1745 A. D.). It is stated therein that the ordeal was performed on the tank of the sacred river Godāvarī at Kopargaon in accordance with Dharmaśāstra in the presence of the Peshwa himself and learned brāhmaṇas and *paṇḍitas* near the temple of the god Śrī Śukleśvara, that as the opponent was long in

592. सन्दिग्धनिर्णयं युक्त्या कुर्वतोपि सहस्रशः । यस्य धर्मतुला नासीद्विमालम्बित-युग्मका ॥ E. I. vol. XII. at pp. 291–292.

possession the ordeal had to be performed by the man claiming title, that an iron ball of 50 palas (i. e. 166 *tolas* and two *māṣas*) was heated red-hot and the *śodhya* carried it across seven circles and threw it in the 8th circle on flour and bundles which began to burn, that his hands were examined in the presence of the opponent and the respectable people and were found unaffected and the opponent was made to pass a document of victory to the *śodhya* called '*yejitapatra*'. The description agrees very closely with that given above. In the same work at pp. 36–41 there is a remarkable description about an ordeal undergone (in 1742 A. D.) by Mahomedan litigants in their own mosque for 15 days by lighting lamps and sitting down in the shrine. There are several other *vatanpatras* in the same work which refer to ordeals.

For an informing article on divyas reference may be made to Dr. Dines Chandra Sirkar's 'The successors[593] of the Śātavāhanas' Appendix pp. 354–376 (Calcutta, 1939). He quotes therein a passage from the 'Asiatic Researches' vol. 1, from which it appears that a magistrate named Ali Ibrahim Khan at Benares tried by *phāla divya* two cases in 1783 A. D. and reported them to the then Governor-General, Warren Hastings. In the 'Tṛtīya-sammelana-vṛtta' (pp. 18–26) and in the Caturtha-sammelana-vṛtta pp. 100–154 of the Bhārata-itihāsa-saṁśodhaka-maṇḍala at Poona (both in Marathi) Mr. Bhaskar Vaman Bhat contributes two thoughtful and scholary papers on the administration of Justice in the times of the Marathas in which the part played by ordeals is described at some length.

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593. It is somewhat strange that Dr. Sirkar refers to 'Divyatattva of Bṛhaspati' (in 'Successors of the Sātavāhanas' Appendix p. 360). A Divyatattva of Raghunandana is well-known. A Divyatattva of Bṛhaspati has so far been mentioned nowhere.

CHAPTER XV

DECISION

The last (i. e. 4th) stage in a judicial proceeding is *siddhi* (Yāj. II. 8) or *nirṇaya* (decision). If pratyākalita (as defined above on p. 298) is regarded as a *pāda* of *vyavahāra* (and since all are agreed that there are only four pādas) then the decision is not a *pāda* of a lawsuit but is the fruit thereof (V. P. p. 86). When the evidence has been led, the king (or chief justice) should with the help of the *sabhyas* decide upon the success or failure of the plaintiff[594]. Nar. II. 42 says that the sabhyas should ask the parties to leave the court when they are considering their verdict or what decision was to be pronounced[595]. It is stated by Vyāsa and Śukra IV. 5. 271 that the decision of a case is based on eight sources[596] (6 acc. to Śukra) viz. the three *pramāṇas* (possession, documents and witnesses), logical inference, the usages of the country, śapathas (oaths and ordeals), the king's edict and the admission of the litigants. Pitāmaha prescribes that, in disputes where there are no witnesses, no possession nor documents and no recourse can be had to divine proof, there the king is the final deciding factor as he is the lord of all[597].

It is stated by Nārada II. 41 and 43 that, whether a party is defeated by his own admission or by his own conduct (i. e. because he adduces false witnesses or forged documents) or

594. उक्तप्रकाररूपेण स्वमतस्थापिता क्रिया । राज्ञा परीक्ष्य सभ्यैश्च स्थाप्यौ जयपराजयौ ॥ संग्रहकार q. by स्मृतिच० II. 120, परा. मा. III. p. 199.

595. Dr. Jolly (S. B. E. vol. 33 p. 35) is not right when he translates Nār. II. 42 as 'whenever the false assertions have been removed the judges shall pass a decree'. He has not also correctly rendered the com. of Asahāya. There is no word for 'assertions' in Nār. II. 42 'पक्षावुत्सार्य तु सभ्यैः कार्यो विनिश्चयः सदा' on which the comment of Asahāya is: यदा निर्णयकालो भवति लग्नस्तदा वादिप्रतिवादिनोः पक्षैः सर्वैस्तत्क्षणसम्बध्यमानकैः सह द्वावप्युत्सार्य सभ्यैर्निर्णयः कार्यः ।

596. प्रमाणैर्हेतुचरितैः शपथेन नृपाज्ञया । वादिसंप्रतिपत्त्या वा निर्णयोऽष्टविधः स्मृतः ॥ व्यास in व्यव. नि. p. 138, व्य. प्र. p. 86, शुक्रनीति IV. 5. 271 (reads षड्विधः स्मृतः). शुक्र apparently regards प्रमाणs as one.

597. लेख्यं यत्र न विद्येत न भुक्तिर्न च साक्षिणः । न च दिव्यावतारोऽस्ति प्रमाणं तत्र पार्थिवः । निश्चेतुं ये न शक्याः स्युर्वादाः सन्दिग्धरूपिणः । तेषां नृपः प्रमाणं स्यात्स सर्वस्य प्रभुर्यतः ॥ पितामह q. by स्मृतिच० II. 26, परा. मा. III. p. 93, व्यवहारसार p. 43, मदनरत्न.

whether he is defeated after full trial and the adducing of proof, it is proper that the defeat should be declared by the sabhyas (the judges) and that a *Jayapatra* (a document of success i.e. a judgment) should be given to the successful party couched in fitting terms. Several verses of Nārada (quoted by Aparārka p. 684), Bṛhaspati (S. B. E. vol. 33 p. 307 verse 19), Kāt. (259–265), Vṛddha-Vasiṣṭha (q. by Mit. on Yāj. II. 91 and Aparārka p. 684) and Vyāsa (Sm. C. II. p. 57) lay down the contents of the judgment[598]. It was to contain a brief statement of the plaint, the reply, the evidence, the depositions of witnesses, discussion thereof, arguments, the smṛti texts applicable, the opinion of the sabhyas, the decision and the relief granted, and should be signed by the chief justice and bear the royal seal. Vas. 19. 10 refers to precedents also in the decision of cases and the awarding of punishments (*āgamād-dṛṣṭāntāc-ca*). The Mit. quotes a smṛti text (on Yāj. II. 91) that other members of the assembly (who are not judges) proficient in smṛti may also sign the judgment to show that the decision is acceptable to them also. But this was not absolutely necessary, as is made clear by the Vivādacandra p. 146. Kāt. (256) applies the word *paścātkāra*[599] (refutation) to a judgment containing the above particulars given after a complete contest, while he restricts the word *jayapatra* to a document (given by the judge) when a plaintiff becomes what is called *hīnavādī* (because he makes a change in his pleading or for similar cause) and when there has been no complete trial of an action; and such a document embodies only what happened. Kauṭ. (III. 19) appears to employ the word 'paścātkāra' in a somewhat different sense when he says 'the

598. सकलं पूर्वपादं च सोत्तरं सक्रियं तथा। सावधारणकं चैव तज्ज्ञेयं जयपत्रकम् ॥ नारद (q. by अपरार्क p. 684); यथोपन्यस्तसाध्यार्थसंयुक्तं सोत्तरक्रियम् । सावधारणकं चैव जयपत्रकमिष्यते ॥ प्राड्विवाकादिहस्ताङ्कं मुद्रितं राजमुद्रया। सिद्धेऽर्थे वादिने दद्याज्जयिने जयपत्रकम् ॥ वृद्धवसिष्ठ q. by मिता० on या. II. 91 and अपरार्क p. 684 ; पूर्वोत्तरक्रियापादं प्रमाणं तत्परीक्षणम् । निगदं स्मृतिवाक्यं च यथासभ्यं विनिश्चितम् । एतत्सर्वं समासेन जयपत्रेऽभिलेखयेत् ॥ व्यास q. by स्मृतिच० II. 57 ; पूर्वोत्तरक्रियायुक्तं निर्णयान्तं यदा नृपः । प्रदद्याज्जयिने लेख्यं जयपत्रं तदुच्यते ॥ बृह. q. by व्य. मा. p. 309 ; सभासदश्च ये तत्र स्मृतिशास्त्रविदः स्थिताः । यथा लेख्यविधौ तद्वत् स्वहस्तं तत्र दापयेत् ॥ कात्या. (263) q. by स्मृतिच. II. p. 57, मिता. on या. II. 91 (without name). 'जयपत्रे सभ्यप्राड्विवाकभूपतिसंमतिरेव प्रयोजिका न तु यावत्पण्डितस्वहस्तोपि' विवादचन्द्र p. 146. Compare Order 20 r. 4 of the Indian Civil Procedure code for the contents of the judgment.

599. निरस्तास्तु क्रिया यत्र प्रमाणेनैव वादिना। पश्चात्कारो भवेत्तत्र न सर्वासु विधीयते ॥ अन्यवादादिहीनेभ्य इतरेषां प्रदीयते । वृत्तानुवादसंसिद्धं तत्र स्याज्जयपत्रकम् ॥ कात्या. q. by स्मृतिच. II. 57–58, परा मा. III. 124–125, व्य. प्र. p. 146. For हीनवादी vide above p. 303.

person, who, when charged with murder, does not reply to the charge that very day, stands refuted ' (i. e. is found guilty)[600]. The Mit. (on Yāj. II. 91) differing from Kāt. holds a jayapatra to be a judgment giving a summary of the plaint, the reply, the evidence and the decision, while when a plaintiff is defeated for change of pleading or for default of appearance or for non-prosecution the document stating this is called '*hīnapatraka*'. It is to be regretted that ancient jayapatras in Sanskrit have not yet been discovered. In 25 Calcutta Weekly Notes pp. CXLII—III Dr. Jolly communicated the substance of a *jayapatra*, couched in ancient Javanese, engraved on a copper-plate found in the island of Java and described by Dr. Brandes in a Dutch paper. That judgment is dated *śake* 849 (928 A. D.), relates to a dispute about a debt of one *suvarṇa* in which the plaintiff failed because he did not appear at the trial. At the end there are the signatures of four witnesses and the document is styled jayapatra at the end. Vide for the same jayapatra J. B. O. R. S. vol. VII pp. 117 ff. The late Mr. K. P. Jayaswal published in 24 Calcutta Weekly Notes (pp. CXLIX-CLVI) a *jayapatra* (text, translation and remarks) granted by the Hindu court of Mithilā in *śake* 1716 (1794 A. D.) and in J. B. O. R. S. vol. VI pp. 246-258, which strictly conforms to the rules of procedure laid down in the smṛtis and nibandhas and is couched in dignified, technical and scrupulously formal language. It related to the ownership of a slave girl. Plaintiff at first made default in appearance; the judgment notes this and also refers to the restoration of the suit. The defendant raised an objection that a single witness to prove a matter was inadmissible. This objection was upheld. Then plaintiff prayed that he might be allowed to undergo an ordeal, but this request was disallowed as human proof was possible and plaintiff ultimately lost his suit. The judgment is written and signed by one Sacalamiśra, who was the chief justice, and is addressed to other members of the sabhā, called dharmādhyakṣas and paṇḍitas, seven of whom express their concurrence (*sammati*) at the top of the document. Vide Journal of the Bihar and Orissa Research Society vol. XXVIII for 1942 for nine Sanskrit jayapatras from the courts of Mithilā in the 18th and 19th centuries.

The Mit. (on Yāj II. 91), and V. Mātṛkā p. 309 note that a jayapatra is given specially to prevent the same matter being

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600. घाताभियोगमप्रतिब्रुवतस्तदहरेव पश्चात्कारः । कौटिल्य. III. 19.

agitated again, while a document given where a party is hīnavādī (i. e. a *hīnapatraka*) serves the purpose of making that party liable later on to pay a fine. When a dispute was decided by a domestic tribunal (kula &c.) there was no jayapatra but only a *nirṇaya-patra* (*kulādibhir nirṇaye jayapatrābhāvān-nirṇaya-ptram tatra kāryam paruttapatramiti yāvat*, as the Vy. Nirṇaya p. 85 says). It would be better to adopt the reading '*vṛttapatram*' as given by one Ms.

The defeated party has to pay a fine to the king and the successful party was complimented (or honoured) by the king (or chief justice) and was to be put in possession of the matter that he succeeded in proving[601]. Manu VIII. 51 prescribes that in monetary matters (i. e. in civil disputes) the defeated party should be made by the king to pay the judgment debt to the successful party and also some fine to the king according to his ability, while Manu VIII. 139 lays down that when the defendant admits in the court his liability he has to pay to the king five per cent as fine and if the defendant denied his liability altogether and was proved to be false he had to pay as fine double of that (i. e. ten per cent). This is analogous to court fee, for which see above pp. 294-295. If one or both parties had laid down a stake or wager (viz. 'if I be defeated in this suit I shall pay a hundred paṇas') then he had to pay that stake to the king and a fine as above and the subject of dispute to the successful party (Yāj. II. 18 and Nār. II. 5)[602]; compare Viṣṇu Dh. S. V. 153-159 for similar rules. The punishments awarded in criminal matters will be discussed immediately below.

It would be necessary to see in what cases review of judgment was allowed. The general rule is stated by Manu IX. 233, 'whenever any legal proceeding has been completed (*tīrita*) or has been carried out so far as to recover a fine from the defeated party, a wise king shall not annul it' (at his mere will or pleasure or through greed). The words 'tīrita' and

601. सिद्धेनार्थेन संयोज्यो वादी सत्कारपूर्वकम् । लेख्यं स्वहस्तसंयुक्तं तस्मै दद्यात्तु पार्थिवः ॥ कात्या. q. by स्मृतिच. II. p. 57, अपरार्क p. 684, स. वि. p. 220. The मदनरत्न (व्यव. ms.) explains 'सिद्धेनार्थेन साधितधनेन। लेख्यं जयपत्रम्। साधितं धनं तद्भिवृद्धिसहितं दापनीयम्।'

602. विवादे सोत्तरपणे द्वयोर्यस्तत्र हीयते। स एव हि पणं दाप्यो विनयं च पराजये॥ नारद II. 5.

'anuśiṣṭa' have been variously explained[603]. The word 'tīrita' is very ancient and occurs in the Delhi Pillar Edict IV of Aśoka (E. I. Vol. II. p. 253) as 'tilita-daṇḍānam' qualifying men imprisoned in jails. Medhātithi and Kullūka explain them as 'decided according to the rules of the śāstra' and 'taken so far as to recover fine from the unsuccessful party' respectively. Kāt. (495) defines them differently: "When a certain side is decided by the sabhyas themselves (without the examination of witnesses) to be either true or false, it is said to be tīrita and that matter or side is called 'anuśiṣṭa' which is declared (to be true or false) on the testimony of witnesses." The lexcion called Vaijayantī seems to have Kāt. in mind and defines 'tīrita' as a perverse decision given by the sabhyas themselves and 'anuśiṣṭa' occurs where the evidence of witnesses makes what is true appear as false (Bhūmikāṇḍa, vaiśyādhyāya, verses 11–12). Nār. II. 65 (S. B. E. vot 33 p. 22) employs the two words, which the Mit. on Yāj. II. 306 respectively explains as (tīrita) 'decided by reliance on documents and witnesses but not carried so far as to recover a fine', and ('anuśiṣṭa') as 'decided so far as to recover a fine from the defeated party'. Vide Aparārka p. 866 and V. P. p. 90 for explanations.

According to Kāt. quoted in the Vyavahārasāra (p. 101)[604] the decree should provide for the successful party receiving the interest on or accretions to the movable or immovable property placed (during the pendency of the suit) in the hands of a third party (as a sort of Receiver). Kāt. (477–480) points[605] out the various ways in which a decree may be executed. The king should make a brāhmaṇa debtor return the decretal debt

603. तीरितं समापितं निर्णयपर्यन्तं प्रापितमिति यावत् । ... अनुशिष्टं अर्थिप्रत्यर्थिनौ प्रति कथितं जयपत्रे चारोपितम् । व्य. प्र. p. 90 ; तीरितं समाप्तं अनुशिष्टं साक्षिभिरुक्तम् । दीपकलिका on या. II. 306 ; तीरितं समापितं निर्णीतमिति यावत् । अनुशिष्टं साक्षिभिरुक्तम् । मदनरत्न (व्यव. ms); सभ्यैर्वा स्वकृतं सभ्यैस्तीरितं साक्षिणा तु चेत् । अनुशिष्टमथो लेख्यो लेख्यं दिव्यं तु दैविकम् ॥ वैजयन्तीकोश.

604. मध्यस्थस्थापितं द्रव्यं चलं वा यदि वा स्थिरम् । पश्चात्तत्सोदयं दाप्यं जयिने पत्रमुत्तरम् ॥ कात्या. in व्यवहारसार p. 101. This is ascribed to नारद in स्मृतिच. II. p. 120, and मदनरत्न which reads मध्ये यत्स्थापितं and जयिने जयपत्रकम् and explains 'मध्ये यत्स्थापितं विवादकाले मध्यस्थस्थापितम्'.

605. राजा तु स्वामिने विप्रं सान्त्वेनैव प्रदापयेत् । देशाचारेण चान्यांस्तु दुष्टान् संपीड्य दापयेत् ॥ रिक्थिनं सुहृदं वापि छलेनैव प्रदापयेत् । वणिजः कर्षकांश्चापि शिल्पिनश्चाब्रवीद् भृगुः ॥ धनदानासहं बुद्ध्वा स्वाधीनं कर्म कारयेत् । अशक्तौ बन्धनागारं प्रवेश्यो ब्राह्मणादृते । कर्षकान् क्षत्रविट्शूद्रान् समीहानांस्तु दापयेत् । कात्या. q. by मिता on या II. 40 and 26, अपरार्क p. 645, स्मृतिच. II. pp. 121, 124, परा. मा. III. 200 and 209.

to the judgment creditor by conciliatory words, should make other debtors return it according to the usage of the country and compel bad people to satisfy the decree by means of physical pain (i. e. imprisonment). The king should make a co-sharer or friend (of the successful party) pay the decretal debt by means of a ruse (i. e. by borrowing an ornament or the like from him on a festive occasion and handing it over to the creditor) and also make traders, husbandmen and artisans (to pay) in a similar way. On finding that the debtor is unable to return the debt in cash, the king should make the debtor, whether a kṣatriya, vaiśya, śūdra or husbandman, work (for the creditor). If he be unable to work the debtor should be sent to jail except when he is a brāhmaṇa. Manu also (IX. 229) says that if the members of the three varṇas other than brāhmaṇa are unable to pay the fine imposed by the king they should be made to work for the king, but a brāhmaṇa may be allowed to pay in easy and small instalments. If a brāhmaṇa debtor was unable to pay, nothing could be done for recovery of the decretal debt except taking a surety from him if any one cared to be one. In modern times also judgment debtors are liable to be arrested and detained in civil jail in execution of decrees under rules 55–58 of the Indian Civil Procedure code (except women in execution of a decree for the payment of money). If in ancient times state policy exempted brāhmaṇas from arrest and detention in a civil jail for monetary debts on spiritual grounds and on the ground of caste, in modern times the State in Indra exempts agriculturists from arrest or imprisonment in execution of a decree for money on economic grounds under certain legislative enactments like sec. 21 of the Deccan Agriculturists' Relief Act (Bombay Act XVII of 1879). As regards women also Kāt. (488–489) laid down certain prudent rules: "Women who are not[606] independent should not be arrested (for offences like adultery); it is the male who should be regarded as the offender; women should be punished by their lord (i. e. the person on whom they depend) but the king should take away for punishment the male offender. Even if a woman whose husband has gone abroad be consigned to jail she should be kept imprisoned only till he returns." The Sm. C. II. p. 323 explains that the first verse applies to a woman who can perform the

606. नास्वतन्त्राः स्त्रियो ग्राह्याः पुमांस्तत्रापराध्यति । प्रभुणा शासनीयास्ता राजा तु पुरुषं नयेत् ॥ प्रोषितस्वामिका नारी धारिता यद्यपि ग्रहे । तावत्सा बन्धने स्थाप्या यावत्प्रत्यागतः प्रभुः ॥ कात्या. q. by स्मृतिच० II. p. 323.

expiation for adultery and who is dependent and the adultery is not with a male of a lower caste.

Nār. (II. 40) lays down[607] a qualification that when a party has been defeated by his own conduct (i. e. by his demeanour or by his having adduced manifestly false witnesses or forged documents) there is to be no retrial or review of judgment, but where a man has lost his cause through (the dishonesty of) witnesses or the *sabhyas*, the cause may be tried anew. There are four exceptions to the finality of the judgments of the king's court. Where a litigant either through folly or insolence[608] thinks a decision to be wrong, he may be allowed a retrial, provided he agrees to pay double the fine inflicted on the losing party (Yāj. II. 306, Nār. I. 65, Kāt. 496). Secondly, where the former judgment is obtained by fraud or force, it may be set aside (Yāj. II. 31)[609]. Thirdly, where the litigant was incompetent, i.e. was a woman or a minor or a lunatic or intoxicated, seriously ill or distressed by a calamity or where the proceeding was carried on by another on behalf of a litigant who did not appoint him or with whom he was not connected in any way or was held inside a house or outside a town or village (i. e. in a forest) or by an enemy, the decision may be set aside and a retrial ordered (Nār. I. 43 in S. B. E. vol. 33 p. 16, Yāj. II. 31–32). Fourthly, a king could set right a former decision of his predecessor which was unjust and arrived at through ignorance (Mit. on Yāj. II. 306)[610].

Yāj. (II. 4 and 305) prescribes that legal proceedings that are suspected to have been wrongly decided by the *sabhyas* through partiality or greed or intimidation should again be tried by the king and if the suspicion turns out to be true he should levy from the *sabhyas* and the party who at first succeeded double the fine that is imposed on a defeated party. Nār. I. 66 (in S. B. E. vol. 33 p. 22) is similar. Manu IX. 231 (= Matsya 227. 158)

607. साक्षिसभ्यावसन्नानां दूषणे दर्शनं पुनः । स्वचर्यावसितानां तु नास्ति पौनर्भवो विधिः ॥ नारद II. 40.

608. तीरितं चानुशिष्टं च यो मन्येत विधर्मतः । द्विगुणं दण्डमास्थाय तत्कार्यं पुनरुद्धरेत् ॥ नारद I. 65 ; कुलादिभिर्निश्चितेपि सन्तोषं न गतस्तु यः । विचार्य तत्कृतं राजा कुकृतं पुनरुद्धरेत् ॥ बृह० and कात्या० q. by स्मृ. च. p. 91.

609. बलोपाधिविनिर्वृत्तान् व्यवहारान्निवर्तयेत् । याज्ञ. II. 31.

610. न्यायापेतं यदन्येन राज्ञाज्ञानकृतं भवेत् । तदप्यन्यायविहितं पुनर्न्याये निवेशयेत् ॥ स्मृति q. by मिता. on या. II. 306, परा. मा. III. p. 582. This is नारद, प्रकीर्णक 9.

and 234 prescribe that when officers appointed to administer justice cause loss to litigants by taking bribes, the king should deprive them of all their wealth and when the *amātyas* (ministers) or chief justice disposes of a matter wrongly (but without being bribed), the king should himself decide the matter correctly and should impose on the *amātyas* or chief justice a fine of 1000 *paṇas*.

Though there is hardly any express smṛti text for the transfer of cases from one court or judge to another court or judge, in practice this must have been done, though rarely. In "Selections from Peshwa's Daftar" vol. 43 p. 108 there is a letter (of 12-8-1764 A. D.) written by the renowned minister Nana Phadnis to the Peshwa Madhavrao in which the former endeavours to persuade the latter to cancel his order for transfer of a case from the court of Rāmśāstri, famed for his impartiality and strict life, to another judge on the ground that one of the litigants was afraid that Rāmśāstri showed some partiality to the other litigant. Manu (VIII. 174-175) states that the king who decides the causes of people unjustly through greed is soon subjugated by his enemies, while the king who curbing his own temper and desires impartially decides causes according to the dictates of śāstra becomes of one mind with his subjects as rivers merge in the ocean. Bṛ. and Nār. I. 74 (S. B. E. vol. 33 p. 24) lay emphasis on both the secular and spiritual effects of doing even justice, saying that when the king gives decisions according to śāstra he spreads his fame in this world and secures Heaven[611].

A crime may be defined as an act or omission that breaks the law and is subject to public punishment. But all kinds of breaches of the law do not result in punishment; only some do. Those breaches are crimes which are deemed to be menaces to the conditions of existence of society, which society, the ruler or legislation recognises as preventible only through punishment. The menace is not that of the specific action, but the abstract menace inherent in that type of action. A breach that is held to be a crime at one time may even be held not to be a crime at another time or in another country. For example, adultery is a crime under the Indian Penal Code (sec. 497), while it is not a crime but a civil wrong in English Law.

611. एवं शास्त्रोदितं राजा कुर्वन्निर्णयपालनम्। वितत्येह यशो लोके महेन्द्रसदृशो भवेत् ॥ साक्षिलेख्यानुमानेन प्रकुर्वन्कार्यनिर्णयम्। वितत्येह यशो राजा ब्रह्मस्याप्नोति विष्टपम् ॥ बृह० q. by स्मृतिच० II p. 123. परा. मा. III. p. 219.

Many crimes and wrongs were sins and entailed secular punishments and also religious sanctions (viz. expiations, *prāyaścittas*). Vide Manu IX. 236, 240, Bṛ. (S. B. E. vol. 33, p. 362, verse 22) and Paiṭhīnasi quoted below[612]. Maine in his 'Ancient Law' chap. X (3rd ed. of 1866) examines ancient western systems like those of Greece and Rome and makes the generalisation (p. 370) that the 'penal law of ancient communities is not the law of crimes; it is the law of wrongs or, to use the English technical word, of Torts. The person injured proceeds against the wrong-doer by an ordinary civil action and recovers compensation in the shape of money damages if he succeeds'. Dr. Priya Nath Sen in his Tagore Law Lectures on 'Hindu Jurisprudence' (1918, Lecture XII) rightly points out that this generalisation is not applicable to Ancient Hindu Law. It has already been shown (on pp. 264–266) that the king could of his own motion take cognisance of many wrongs called *chalas, padas* and *aparādhas* and it is clear that in such crimes as theft, assault, adultery, rape, and manslaughter the smṛti texts do not prescribe only a money compensation to the person wronged, but corporal punishment in the first instance and monetary compensation in addition. Vide for example, Manu VIII. 287, Yāj. II. 222, Bṛ. (SBE vol. 33 p. 358 verses 9–10), Kāt. (787) which prescribe a punishment for causing pain to the body or the loss of a limb and also the expenses of curing the person injured and some *solatium* to him.[613] Āp. Dh. S. (I. 9. 24. 1 and 4) lays down that the slayer of a kṣatriya should give a thousand cows in order to remove the enmity (i. e. as compensation to relatives.) and one bull in addition for expiation.[614] The Chāndogya Upaniṣad quoted above (p. 362) shows that a thief was punished with death in those early days. There is a passage in the Tai. S. II.

612. अकार्यकारिणामेषां प्रायश्चित्तं तु कल्पयेत् । यथाशक्त्यनुरूपं च दण्डं चैषां प्रकल्पयेत् ॥ पैठीनसि q. by दण्डविवेक p. 76.

613. देहेन्द्रियविनाशे तु यथा दण्डं प्रकल्पयेत् । तथा तुष्टिकरं देयं समुत्थानं च पण्डितैः ॥ समुत्थानव्ययं चासौ दद्याद्व्रणविरोपणात् । कात्या. q. by स्मृतिच. II. p. 329, अपरार्क p. 816, परा मा. III, pp. 419–420; दण्डस्त्वभिहतायैव दण्डपारुष्यकल्पितः । हते तद्द्विगुणं चान्यद्राजदण्डस्ततोऽधिकः ॥ बृह. q. by विश्वरूप on या. II. 226.

614. क्षत्रियं हत्वा गवां सहस्रं वैरयातनार्थं दद्यात् । ... ऋषभश्चात्राधिकः सर्वत्र प्रायश्चित्तार्थः । आप. ध. सू. I. 9. 24. 1 and 4. हरदत्त in order to bring Āp. in line with Manu XI. 127 and Yāj. III. 266 explains that 1000 cows and one bull are all for expiation.

6. 10. 1 (quoted in H. of Dh. vol. II. p. 151 n. 346) which states, ' He who threatens a brāhmaṇa should be made to pay a hundred, he who strikes a brāhmaṇa should be made to pay a thousand '. It is rather doubtful whether the figures stated are fines or are meant as *solatium* to the wronged. In Ṛg. II. 32. 4 (which also occurs in Tai. S. III. 3. 11. 5) the poet prays to Rākā[615] (the Full Moon personified) that she may be pleased to grant the boon of a valiant son, who would be 'śatadāya'. Sāyaṇa's rendering of this word as ' possessed of plentiful heritage or wealth ' appears to be the right one. The words ' śatadāyam vīram ' in the Tai. S. III. 3. 11. 5 are translated by Prof. Keith as ' a hero whose *wergild* is a hundred '. This is incorrect, confounding as it does the ideas of western Germanic tribes with the Ṛgveda composed several millenniums earlier. It would be a strange thing to pray to a goddess for a son and at the same time to have in mind or refer to the price set upon him if he happened to be killed.

The ancient smṛti writers were quite aware of the several purposes served by punishments for crimes,[616] though they do not develop a regular science of penology. The person wronged feels a great urge for revenge or retaliation and other men sympathise with that emotion. The individual, however, could not, in civilized societies, take the law into his own hands and therefore the State saw to it that the emotion for retaliation or revenge was to some degree satisfied by the adequate punishment of the wrongdoer. Yāj. II. 16 and Nār. I. 46 (SBE vol. 33 p. 17) state that when a person without complaining to the king sets about to secure what is denied by the opposite side or is doubtful he becomes liable to punishment and he also cannot secure the object he wants.[616a] In all ancient societies the *lex talionis* (the law of retaliation, viz. an eye for an eye,

615. राकामहं सुहवां सुष्टुती हुवे ... ददातु वीरं शतदायमुक्थ्यम् ॥ ऋ. II. 32.4.

616. The work of Harry Elmer Barnes on 'The Study of punishment (1930, New York) may be read with great interest and profit. It will set off to great advantage the comparatively humane treatment of criminals in Ancient India as compared with the horrible and revolting methods for punishing criminals employed in the West.

616 a. अनावेद्य तु यो राज्ञे सन्दिग्धेऽर्थे प्रवर्तते । प्रसह्य स विनेयः स्यात्स चास्यार्थो न सिध्यति ॥ नारद I. 46.

a tooth for a tooth) prevailed.[617] Manu VIII. 280 (which is almost the same as Nār., pāruṣya, verse 25), Yāj. II. 215, Viṣṇu Dh. S. V. 19 and Śaṅkha-Likhita prescribe that with whatever limb[618] a man of low caste offends against a brāhmaṇa, that very limb of his shall be cut off. Another and the most important purpose of punishment is deterrent. Punishment of the evil-doer serves as an example and a warning to all others that might be tempted to tread the paths of violence and crime. This aspect of punishment (daṇḍa) has already been dwelt upon in the section on *rājadharma* (p. 21). The end sought to be served by punishment was the protection of society and the securing of its happiness. The Śāntiparva (15.5–6) remarks that people do not commit sins through fear of punishment at the hands of the king, through fear of Yama and of the next world and through fear of others (i. e. public opinion).[619] Gaut. XI. 28 derives the word *daṇḍa* from the root *dam* to restrain or to deter. This purpose of punishment is well brought out in the Mṛcchakaṭika (X) when the sentence passed on Cārudatta for the alleged murder of Vasantasenā is proclaimed to the citizens by the executioners.[620] Another purpose of punishment is preventive i. e. if a culprit is imprisoned for an offence he is prevented or disabled from repeating the same offence or

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617. Vide Deut. XIX. 21, Lev, XXIV. 20 for the ancient Hebrew Code (eye for eye &c.), the code of Hammurabi (about 2200 B. C.) in Babylon and the law of the Twelve Tables in Rome. In the 8th Table in Ortolan's 'History of Roman Law' (tr. by Pritchard and Nasmyth, 1871) p. 114 the 2nd provision is: 'retaliation against him who breaks the limb of another and does not offer compensation'. In Hammurabi's Code (text tr. by C. H. W. Johns, 1903) sections 196 and 200 are: 'If a man has caused the loss of a gentleman's eye, his eye one shall cause to be lost. If a man has made the tooth of a man that is his equal to fall, one shall make his tooth to fall out'.

618. येन येनाङ्गेनापराधं कुर्यात्तत्तदस्य च्छेत्तव्यमन्यत्र ब्राह्मणात्। शङ्खलिखित q. in व्य. म. p. 249; येनाङ्गेनावरवर्णो ब्राह्मणस्यापराध्नुयात्। तदङ्गं तस्य छेत्तव्यमेवं शुद्धिमवाप्नुयात्॥ नारद (पारुष्य 25); हीनवर्णोऽधिकवर्णस्य येनाङ्गेनापराधं कुर्यात्तदेवास्य शातयेत्। विष्णुधर्मसूत्र V. 19.

619. राजदण्डभयादेके पापाः पापं न कुर्वते। यमदण्डभयादेके परलोकभयादपि। परस्परभयादेके पापाः पापं न कुर्वते।... दण्डस्यैव भयादेते मनुष्या वर्त्मनि स्थिताः॥ शान्ति 15. 5-6. Vide मत्स्य for almost the same words (225. 16-17).

620. शृणुत आर्याः शृणुत। एष ... आर्यचारुदत्तो नाम। एतेन ... वसन्तसेना मारिता ... तदा राज्ञा पालकेन वयमाज्ञप्ताः एतं मारयितुम्। यद्यपर ईदृशमुभयलोकविरुद्धमकार्यं करोति तमपि राजा पालक एवमेव शास्ति। मृच्छकटिक X after verse 11.

committing further offences for some time at least and if he be sentenced to death or transported for life or banished, the commission of offences by him is prevented for his life-time. Another purpose was that of reform or redemption of the evil-doer. The punishment was deemed to be a sort of expiation, which purged the man of sinful promptings and reformed his character. Manu VIII. 318 (=Vas. 19. 45) states that men who are guilty of crimes and have been punished by the king go to heaven, becoming pure like those who perform meritorious deeds. Medhātithi remarks on this verse that this applies only where the punishment is corporal and not merely monetary. It will be seen from the early sūtras like that of Gautama and from the Manusmṛti that the more ancient criminal law in India was very severe and drastic, but that from the times of Yājñavalkya, Nār. and Bṛ. the rigour of punishments was lessened and softened and fines came to be the ordinary punishments for many crimes, as is noted by Fa Hien (399–400 A. D.) in relation to middle India (*Madhyadeśa*) under the Guptas apparently: 'The king governs without decapitation or other corporal punishments. Criminals are simply fined, lightly or heavily according to the circumstances. Even in circumstances of repeated attempts at wicked rebellion they only have their right hands cut off' (Legge, 1886 p. 43). This may be contrasted with the state of things depicted by Megasthenes 700 years earlier than Fa Hien: (Fragment XXVII p. 71) 'a person bearing false witness suffers mutilation of his extremities. He who maims anyone not only suffers loss of the same limb but his hand also is cut off. If he causes an artisan to lose his hand and eye he is put to death'. The Daśakumāracarita (II. p. 56) states that the Mauryas conferred a boon on traders that for certain offences they were not to be sentenced to death, but were to be deprived of all their wealth and banished. The first separate Rock Edict of Aśoka at Dhauli (Corpus I. I. pp. 93, 97) shows that great Emperor's anxiety that his judicial officers should strive to see that there is no undeserved fettering or no undeserved harsh treatment. In India the list of capital offences at any time was much shorter than in the West. Stephens is constrained to admit that in England 'there can be no doubt that the legislation of the 18th century in criminal matters was severe to the highest degree and destitute of any sort of principle or system' (His. of Cr. Law, vol. I. p. 471). As stated by Dr. Hart (in 'Way to justice' p. 94), at the beginning of the 19th century in England more than a hundred offences were

punishable by death. In 1832 a child was convicted at Ludgate Hill for stealing a box of paints worth two pence, was tried at the Old Bailey and hanged (vide 'In the service of youth', by Dr. J. M. Brew, 1943 chap. XV. p. 208).

Manu VIII. 129, Yāj. I. 367 and Bṛ. (S. B. E. 33 p. 387 verse 5), Vṛddha-Hārīta (7.195) speak of four methods of punishment (*daṇḍa*) viz. by gentle admonition, by severe reproof, by fine and by corporal punishment and declare that these punishments may be inflicted separately or together according to the nature of the offence.[621] The first takes the form of saying, 'you have not done a proper thing', the 2nd 'fie upon you who are a wrongdoer and guilty of *adharma*'. Bṛ. lays down that preceptors, *purohitas* and sons should be sentenced to the punishment of wordy admonition, other persons who engage in disputes should be punished with reproof or fines and those guilty of mahāpātakas should be punished with corporal punishment. That admonition and reproof were two modes of punishment shows that ancient writers were alive to the notion that among very sensitive persons or in a very sensitive society verbal condemnation would be enough to achieve the main purposes of punishment. Bṛ. (SBE vol. 33. p. 388 verse 8) states that the first two are within the privilege of the brāhmaṇa (appointed as chief justice) but fines and corporal punishment are to be inflicted by the king (on the recommendation of the chief justice, *prāḍvivākamate sthitaḥ*). The Mṛcchakaṭika (IX) bears this out when the judge says 'We have authority only to pronounce the judgment; as to the rest the king is the final authority' (*nirṇaye vayaṁ pramāṇam śeṣe tu rājā*). Gaut. XII. 51, Vas. 19. 9, Manu VII. 16, VIII. 126 and Yāj. I. 368 (=Vṛddha-Hārīta VII. 195-196), Bṛhat Parāśara p. 284, Kauṭ. IV. 10 lay down that the award of punishment must be regulated by a consideration of the motive and nature of the offence, the time and place, the strength, age, conduct (or duties), learning and monetary position of the offender and by the

621. The Daṇḍaviveka of Vardhamāna (published in Gaikwad Oriental series, 1931) deals exhaustively with the subject of punishments. न त्वयेदं सम्यक् कृतमिति निन्दा, धिक् त्वां पापीयांसमधर्मकारिणमिति निर्भर्त्सनम्। दण्डविवेक p. 20; these are respectively वाग्दण्ड and धिग्दण्ड. गुरून्पुरोहितान्पुत्रान्वाग्दण्डेनैव दण्डयेत्। विवादिनो नरांश्चान्यान्धिग्धनाभ्यां च दण्डयेत्॥ महापातकयुक्तांश्च वधदण्डेन दण्डयेत्। बृह. q. by स्मृतिच. II. p. 126 and व्यव. नि. p. 528.

fact whether the offence[622] is repeated. This provision means that the dharmaśāstras did not hold that the same punishment must be meted out for the same offence irrespective of the antecedents, characteristics or physical and mental condition of the offender. They always took extenuating circumstances into account. Kauṭ. (I. 4), differing from the view of the ācāryas that there is nothing like daṇḍa for bringing under one's complete control all beings, gives his own opinion that, as a king whose control and punishments are most severe makes the subjects disgusted with him and as the king who deals mild punishments is disregarded by the people, the king should distribute punishments according to the deserts of the offenders and would then command respect.[623] One reason why some of the works on dharmaśāstra prescribe mild punishments is the doctrine of *karmavipāka* (a man committing certain sins is born in the next life afflicted with certain diseases or bodily deficiencies or is born as a low or filthy beast or bird). Vide Manu XI. 49-52, Yāj. III 207-216, Viṣṇu Dh. S. 44-45. This doctrine will be dealt with later on under *pātaka* and *prāyaścitta*. Gaut. XII. 48 first provides that the king must take into account, when awarding punishment to the criminal, his physical or monetary circumstances, the nature of the crime, the fact of repetition of the crime and then adds that the king should award punishment after consulting an assembly of learned brāhmaṇas. The Daṇḍaviveka (p. 36) quotes a verse in which the considerations that should weigh in awarding punishment are brought together viz. the offender's caste (as in Manu VIII. 337-338 for theft), the value of the thing, the extent or measure (as in Manu VIII. 320), use or usefulness of the thing with regard to which an offence is committed (as in Manu VIII. 285), the person against whom an offence is committed (such as an idol or temple or king or brāhmaṇa), age, ability (to pay),

622. पुरुषं चापराधं च कारणं गुरुलाघवम् । अनुबन्धं तदात्वं च देशकालौ समीक्ष्य च । उत्तमावरमध्यत्वं प्रदेष्टा दण्डकर्मणि । राज्ञश्च प्रकृतीनां च कल्पयेदन्तरान्वितः ॥ कौ. IV. 10; दण्डस्तु देशकालधर्मवयोविद्यास्थानविशेषैर्हिंसाक्रोशयोः कल्प्यः । वसिष्ठ 19. 9; पुरुषशक्त्यपराधानुबन्धविज्ञानाद्दण्डनियोगः । अनुज्ञानं वा वेदवित्समवायवचनात् । गौ. XII. 48-49; अनुबन्धं परिज्ञाय देशकालौ च तत्त्वतः । सारापराधौ चालोक्य दण्डं दण्ड्येषु पातयेत् ॥ मनु 8. 126, on which मेधातिथि makes the striking remark that this is the fundamental verse about all offences 'उक्तानुक्तदण्डेष्वपराधेषु मातृकाश्लोकोऽयम् । एतदर्थानुसारेण सर्वदण्डक्लृप्तिः कर्तव्या ॥'

623. न ह्येवंविधं वशोपनयनमस्ति भूतानां यथा दण्ड इत्याचार्याः । नेति कौटिल्यः । तीक्ष्णदण्डो हि भूतानामुद्वेजनीयः । मृदुदण्डः परिभूयते । यथार्हदण्डः पूज्यः । सुविज्ञातप्रणीतो हि दण्डः प्रजा धर्मार्थकामैर्योजयति । अर्थशास्त्र I. 4. Vide Manu VII. 103 (= Śānti 140. 8) which appears to be of the same opinion as the ācāryas.

qualities, time, place, the nature of the offence (whether it is repeated or is a first offence). The Rājataraṅgiṇī (VIII. 158) provides that in disputes where parties are in doubt as to their rights it is proper to award punishment with forbearance but where a man starts on an evil path of set purpose (the king and officers) must award severe punishment. In modern times there are controversies among several schools of criminology. Some hold that every man has freedom to act criminally or not or to act in the way he does and that each man has complete moral responsibility for his own acts. On the other hand there are some who go to the other extreme and propound that a so-called criminal act is mostly due to biological, physiological, pathological or sociological conditions, to the upbringing and environment of the person charged with crime. They favour determinism. The ancient Indian writers do not enter into these speculations. But when they said that regard must be paid to time and place and other considerations they were faintly conscious of or were groping towards the ideas of the 2nd school.

Fines are either fixed or not fixed (i. e. variable). They range from a *kākiṇī* to the confiscation of all wealth; fixed fines were of three kinds called *prathama sāhasa*, *madhyama sāhasa* (middling amercement) and *uttama sāhasa* (highest). These are variously defined. According to Śaṅkha-Likhita the first[624] amercement is fine from 24 paṇas to 91, the middling one is from 200 to 500 paṇas and the highest is from six hundred to 1000

624. चतुर्विंशतिरेकनवतिः प्रथमसाहसः। द्विशतं पञ्चशतं चैव मध्यमसाहसः। षट्शतं सहस्रं चोत्तमः। यथासारापकारम्। शङ्खलिखित q. by वि. र. p. 664, दण्डविवेक p. 23.

There was great divergence of views about the metal in which the fines were to be paid. According to Vijñāneśvara the figures of fines in such verses as Manu VIII. 378 (where no metal is specified) the *paṇas* are those of copper, while according to Bhāruchi (quoted in S. V. p. 150) they are of gold. The S. V. remarks that local usage is to be followed. The V. Mayūkha (p. 255) states that in all texts (about fines) the mention of a number without specifying the object to which it refers is to be deemed to refer to paṇas, that paṇa is a copper piece one *karṣa* in weight and that karṣa is one fourth of a pala. Bṛ. (q. by Sm. C. II. p. 99) states that the tables in Manu (VIII. 132-136) beginning with the dust particle in a beam and ending with kārṣāpaṇa is to be followed in ordeals and fines. An interesting sidelight is shed on crimes and their punishments in the Inscription of Cālukya Vikramāditya V (dated *śake* 934) from Gadag which provides that the fines for abuse, assault, for drawing out a dagger, for stabbing and for adultery by a bachelor were respectively 2 paṇas, 12 paṇas, 3 gadyāṇas, 12 gadyāṇas and 3 gadyāṇas (vide E. I. vol. 20 p. 64.)

in proportion to the value of the matter in dispute or the injury caused. Manu VIII. 138 (= Viṣṇu Dh. S. IV. 10) states that the first, middling and highest fines are respectively 250, 500 and 1000 paṇas, while Yāj. I. 366 puts these respectively at 270, 540 and 1080. The Mit. explains that the lesser figures of Manu represent the fines to be awarded for offences committed without set purpose. Nār. (sāhasa, verses 7–8) prescribes that 100 paṇas is the lowest limit of fines for the lowest kind of *sāhasa*, 500 is the lowest for middling sāhasa, 1000 is the lowest fine in what is called the highest amercement (and might include death penalty, forfeiture of all property, banishment, branding and cutting off of a limb). Fines were supposed to be lesser than corporal punishment. Kāt. (490–493) lays[625] down the following rules: Whatever figure of fine is prescribed in the smṛti texts for a wrong it is to be paid to the king in paṇas of copper or their equivalent. Where the fine is said to be one-fourth or one half of a māṣa, there it is a golden māṣa that is meant; when the fine is declared in māṣas, they are to be understood as those of silver and where the fine is declared in kṛṣṇalas the same is to be understood; a māṣa is $\frac{1}{20}$th of a kārṣāpaṇa.' The general rule that lesser punishment is to be inflicted on women is stated by Kāt. (487) 'In the case of all offences, women are to suffer half of the fine in money which is prescribed for a male offender (of the same kind) and when the punishment is death for a male, the punishment for a woman would be the excision of a limb.'[626] Kauṭ. (III. 3) provides: 'a woman attains ability to enter into transactions on completion of 12 years and men when they are 16; if they disobey after that (i. e. after attaining majority) the woman shall be fined twelve paṇas and a man twice that amount.'[627] Aṅgiras quoted by the Mit. (on Yāj.

625. कल्पितो यस्य यो दण्डस्त्वपराधस्य यत्नतः । पणानां ग्रहणं तु स्यात्तन्मूल्यं वाथ राजनि ॥ माषपादो द्विपादो वा दण्डो यत्र प्रवर्तितः । अनिर्दिष्टं तु सौवर्णं माषकं तत्र कल्पयेत् ॥ यत्रोक्तो माषकैर्दण्डो राजतं तत्र निर्दिशेत् । कृष्णलैश्चोक्तमेव स्यादुक्तदण्डविनिश्चयः ॥ माषो विंशतिभागस्तु ज्ञेयः कार्षापणस्य तु ॥ कात्या. 490–493 q. by स्मृतिच. II. p. 127, दण्डविवेक p. 29–30 (there are various readings in all these). The व्यव. नि. p. 202 says: धर्मशास्त्रेषु दण्डविधानावौ संख्यामात्रे निर्दिष्टे पणानां व्यवहारार्थतया कल्पत्वात् संख्येयतया प्रायेण तत्र पणा एव गृह्यन्त इति ।

626. सर्वेषु चापराधेषु पुंसो योऽर्थदमः स्मृतः । तदर्धं योषितो दद्युर्वधे पुंसोऽङ्गकर्तनम् ॥ कात्या. (487) q. by स्मृतिच. II. p. 321, व्य. म. p. 246.

627. द्वादशवर्षा स्त्री प्राप्तव्यवहारा भवति षोडशवर्षः पुमान् । अत ऊर्ध्वमशुश्रूषायां द्वादशपणः स्त्रिया दण्डः पुंसो द्विगुणः ॥ कौ. III. 3.

III. 243) states that[628] an old man over eighty, a boy below sixteen, women and persons suffering from diseases are to be given half prāyaścitta and Śaṅkha quoted by the Mit. (on the same verse) that a child less than five commits no crime nor sin by any act and is not to suffer any punishment nor to undergo a prāyaścitta[629]. Under the Indian Penal Code, sec. 82, nothing is an offence which is done by a child under seven years of age. The severity of punishment depended on caste also. In the case of theft, Gaut. XII. 15–16, Manu VIII. 338–39 prescribe that a vaiśya, a kṣatriya and a brāhmaṇa should respectively be fined twice, four times and eight times of the fine to be imposed upon a śūdra for a theft, since each of these is deemed more and more aware of the heinousness of the crime. Kāt. (485) and Vyāsa state this as a general rule for all offences[630]. In the case of abuse and defamation the scales are turned in favour of the higher castes as regards fines. Gaut. XII. 1, 8–12, Manu VIII. 267–268 (=Nār. pāruṣya 15–16), Yāj. II. 206–207 prescribe that a kṣatriya or a vaiśya or a śūdra abusing or defaming a brāhmaṇa was to be respectively punished with the fine of 100 paṇas, 150 paṇas and with corporal punishment (cutting off the tongue), while a brāhmaṇa defaming a kṣatriya, vaiśya or śūdra was to be fined 50, 25 or 12 paṇas respectively (nothing in the last case acc. to Gaut. XII. 13). In the case of adultery and rape the caste of the offender and of the woman concerned made great difference in the punishment awarded. For adultery with a woman of the same caste Yāj. II. 286 prescribed the highest amercement, the middling one when the paramour was of a higher caste, but if the male be of a lower caste than the woman, the male offender was sentenced to death and the woman had her ears cut off. Corporal punishment assumes (as pointed out by the Daṇḍaviveka p. 20) various forms according as it is meant to cause only harassment (pain) or is

628. अशीतिर्यस्य वर्षाणि बालो वाप्यूनषोडशः । प्रायश्चित्तार्धमर्हन्ति स्त्रियो व्याधित एव च ॥ ऊनैकादशवर्षस्य पञ्चवर्षात्परस्य च । चरेद्गुरुः सुहृच्चैव प्रायश्चित्तं विशुद्धये ॥ अतो बालतरस्यास्य नापराधो न पातकम् । राजदण्डो न तस्यास्ति प्रायश्चित्तं न विद्यते ॥ q. by हरदत्त on गौ. II. 6 (without name). The मिता० on या. III. 243 ascribes the first to अंगिरस् and the last two to शङ्ख.

629. Nār. IV. 85 holds that a boy is called *śiśu* and is like an embryo till eight and *bāla* or *pogaṇḍa* thereafter till 16.

630. येन दोषेण शूद्रस्य दण्डो भवति धर्मतः । तेन चेत्क्षत्रविप्राणां द्विगुणो द्विगुणो भवेत् ॥ कात्या. 485 q. by स्मृतिच. II. 127, परा. मा. III. 211 (ascribes to पितामह); प्रायश्चित्तं च दण्डं च शौचं चातो यथाक्रमम् । कल्पयेदुत्कृष्टमुत्कृष्टे मध्यं मध्येऽधमेऽधमम् ॥ व्यास q. by विश्वरूप on या. I. 17.

carried out by cutting off (or destroying) a limb or to cause death. Harassment or pain may be inflicted by imprisonment, beating, putting fetters, by making ridiculous (by the complete shaving of the head, declaring the offence by beat of drum in the presence of the convict, parading him through the streets on an ass) and marking him with signs indicative of offences like theft. Manu (VIII. 125) provides that punishment may fall upon any one (or more) of ten places in the case of the three higher castes, viz. the private parts, the belly, the tongue (either whole or half), the hands, the feet, the eyes, the nose, the ears, wealth and the whole body; but a brāhmaṇa shall depart unhurt from the country (i. e. he is to be only banished). Bṛ. (SBE. 33 p. 388 verses 9–10) speaks of fourteen places of punishment adding the neck, the thumb and index, the forehead, the lips, the hind part, hips, one half of the feet (to Manu's ten) and omitting wealth and the whole body therefrom. Gaut. XII. 43, Kauṭ. IV. 8, Manu (VIII. 125, 380–381), Yāj. II. 270, Nār. (sāhasa, 9–10), Viṣṇu V. 1–8, Bṛ. (SBE. vol. 33 p. 388 verse 11), Vṛddha-Hārita VII. 191 prescribe that a brāhmaṇa was not to be sentenced to death or corporal punishment for any offence whatever, but if he were guilty of an offence deserving the death penalty, he was to be punished by ordering his entire head to be shaved, he might be banished from the country (from the city acc. to Nār.), a mark appropriate to the grave sin committed by him might be branded on his forehead and he might be paraded on an ass.[631] Yama,[632] quoted by Sm. C. and V. P., while providing that a brāhmaṇa was to be free from undergoing corporal punishment, allows

631. वधार्हते ब्राह्मणस्य न वधं ब्राह्मणोऽर्हति । शिरसो मुण्डनं दण्डस्तस्य निर्वासनं पुरात् । ललाटे चाभिशस्ताङ्कः प्रयाणं गर्दभेन च ॥ नारद (साहस 9–10). In these days of fasts as part of the technique of *satyāgraha* for redress of grievances or for justice pursued by Mahātmā Gāndhi and some of his ardent followers it is interesting to note that the widow of the murdered brāhmaṇa referred to on p. 397 had been undergoing voluntary starvation (prāyopaveśa) for four days for securing punishment of her husband's murderer (who she believed was a wizard) and that the king himself being unable to prove the guilt of the accused began to starve himself and found proof by supernatural means (Rājataraṅgiṇī IV. 82–105).

632. न शारीरो ब्राह्मणस्य दण्डो भवति कर्हिचित् । गुप्ते तु बन्धने बद्ध्वा राजा भक्तं प्रदापयेत् । अथवाप्यधनं रक्षाकर्म वा कारयेन्नृपः । मासार्धमासं कुर्वीत कार्यं विज्ञाय तत्त्वतः । यथापराधं विप्रं तु विकर्माण्यपि कारयेत् । अवध्या ब्राह्मणा गावो लोकेऽस्मिन्वैदिकी श्रुतिः ॥ यम quoted by स्मृतिच. II. p. 317, व्य. प्र. p. 393 (only the first).

the king to keep a brāhmaṇa offender in confinement in a secret place and give him bare maintenance or the king may make him do the work of guarding cattle for a month or a fortnight or make him perform other work not fit for a decent brāhmaṇa. The Mit. on Yāj. II. 270 explains that the mark of female private parts for violating *guru's* bed, of a tavern for drinking the liquor called *surā*, a dog's foot for theft, of a headless corpse for brāhmaṇa murder (as laid down by Manu IX. 237 and 240, Viṣṇu Dh. S. V. 4) is to be made on the forehead only if the offender (whether a brāhmaṇa or not) did not perform *prāyaścitta* for those grave sins. Branding with marks appropriate to the crime committed were in vogue in Rome and in Britain up to 1699 (such as the mark of the letter M for murderers, T for thieves &c.). Vide Barnes' 'Story of punishment' p. 62. The Rājataraṅgiṇī (IV. 96–106) refers to a case in the reign of king Candrāpīḍa of Kashmir when a brāhmaṇa guilty of the murder of a brāhmaṇa was exempted from death sentence because of the smṛti rule. Manu IX. 241 gives option that a brāhmaṇa (unintentionally) guilty of grave offences may be punished with the middle amercement or he may be banished from the realm keeping all his wealth. The punishments for a brāhmaṇa offender, according to Gaut. XII. 44, were preventing him from doing the same thing again, depriving him of all wealth, taking sureties from him, proclaiming him as a thief in the city banishment, putting on his forehead the mark indicative of his crime. Āp. Dh.S. (II. 10.27. 16–17)[633] lays down that a brāhmaṇa guilty of murder, theft, forcible seizure of another's land was to have his eyes covered over with cloth for the whole of his life (while a śūdra guilty of any of the three was to receive the death sentence). Vṛddha-Hārīta (VII.209–210) says that a brāhmaṇa should be branded on the body for all those offences that entailed corporal punishment for other offenders, that he should have his head shaved, that he should be deprived of all his property and banished from the realm. The force of popular feeling on the point of exempting a brāhmaṇa offender from the death sentence was so great that Elphinstone (Governor of Bombay) in Regulation 14 of 1827, sec. IV (cl. 5) exempted brāhmaṇas and women from death sentence even for murder where public feeling would

633. पुरुषवधे स्तेये भूम्यादान इति स्वान्यादाय वध्यः चक्षुर्निरोधस्त्वेतेषु ब्राह्मणस्य। आप. ध. सू. II. 10. 27. 16–17.

be shocked[634]. It is not to be supposed that this exemption of the brāhmaṇa from the death sentence was unanimous or universal. Kāt. (806) contains this remarkable statement:[635] ' Even a brāhmaṇa deserves to be killed if he be guilty of

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634. यत्तु शङ्खेनोक्तं 'अदण्ड्यौ मातापितरौ स्नातकपुरोहितौ परिव्राजकवानप्रस्थौ जन्मकर्मश्रुतशीलाचारवन्तश्च' इति, यदपि कात्यायनेन 'आचार्यस्य पितुर्मातुर्बान्धवानां तथैव च। एतेषामपराधेषु दण्डो नैव विधीयते' इति तच्छारीरार्थदण्डयोर्निषेधार्थं न पुनर्दण्डमात्रस्य। स्मृतिच. II. p. 126. Medhātithi on Manu VIII. 125 makes it clear that the absence of a fine occurs only in the case of a brāhmaṇa who was a first offender, who did not commit the offence with forethought and who was endowed with learning, good family and character. The Sm. C. II. p. 124 relying on Manu IX. 236 says that a brāhmaṇa could be imprisoned but he could not be subjected to such corporal punishment as cutting off a limb or whipping. The Smṛtis openly regarded the brāhmaṇa's person as sacred and so saved his body. The smṛtis endeavoured to reach the ideal of the rule of law and succeeded to a great extent in doing so. They held that every man, whatever his rank or condition, was subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. The only differential treatment that we find is in the appointment of judges (pp. 272-273), in the order of taking up causes of litigants (p. 298), in the punishment for perjury (Manu VIII. 123-124), in the matter of corporal punishment, in abuse, defamation and assault (pp.395-397), in punishment for adultery, in the repayment of debts and in the punishment for theft, which was severer for a brāhmaṇa. It will be shown below that from the 13th century, as indicated by the Sm. C., S. V. and Madanaratna, differential punishments had gone out of vogue. The smṛtis did not, like some modern freedom-loving people, declare the equality of all before the law on paper and in practice indulge in lynching. Further the smṛtis required all offenders of whatever caste to be brought before the same tribunals. Manu VIII. 335 and Yāj. I. 358 emphasize that there is none who is exempt from punishment in the king's court whether the person be the king's father or teacher or friend or mother or wife or a son or a family priest or brother or father-in-law or maternal uncle. Śaṅkha-Likhita and Kāt. (481) no doubt say that a king should not punish his parents, his family priest, teacher, near relatives, forest hermits, ascetics. But, as the Sm. C. II. p. 126 explains, the real meaning is not that the king is to allow these to escape scot-free, but that he should not inflict corporal punishments or fines on these, but should employ admonition or severe reproof towards them. The smṛtis do not contain rules like those in the Indian Criminal Pro. Code entitling Europeans and Americans in India to claim a jury preponderantly composed of their countrymen and claiming trial only by the High Court or like the privileges of the English Peers to be tried only by the House of Lords for felonies or the doctrine of the benefit of clergy abolished in 1827. Vide H. of Dh. vol. II. pp. 140-143 and 147-152 about certain privileges of brāhmaṇas.

635. गर्भस्य पातने स्तेनो ब्राह्मण्यां शस्त्रपातने। अदुष्टां योषितं हत्वा हन्तव्यो ब्राह्मणोऽपि हि॥ कात्या q. by विश्वरूप on या. II. 281.

causing abortion, if he be a thief (of gold) or if he kills a brāhmaṇa woman with a sharp weapon or if he kills a chaste woman'. Kauṭilya (IV. 11) prescribes that a brāhmaṇa who aims at the kingdom or who forces entrance into the king's harem or who incites wild tribes or enemies (against his king) or who foments disaffection (or rebellion) in forts, the country or the army should be sentenced to death by drowning.[636] The fact that Cārudatta, a brāhmaṇa, is represented as having been condemned to death by king Pālaka in the Mṛcchakaṭika indicates that the sentence of death against brāhmaṇas was not entirely unheard of. It appears from Fick's 'Social organisation' &c. p. 212 that in many Jātaka passages the execution of brāhmaṇas is referred to.

The Śāntiparva chap. 268 contains an interesting dialogue between king Dyumatsena and his son prince Satyavat on the subject of the punishment of death, which contains some of the arguments forcibly urged in these days by those that are opposed to capital punishment altogether. The prince pleads that punishment should be light even for grave offences, that when the sentence of death is carried out in the case of robbers,[636a] several innocent persons (such as the wife, the mother, the son of the condemned man) suffer great loss (and they may die also), that if offenders give themselves up to priests, swear before them that they will never commit sin, they may be let off after undergoing penance, that if great men go astray their punishment should be proportionate to their greatness. The king replies that in former ages when people were most truthful, soft-hearted, and not hot-tempered the punishment of saying 'fie on you' sufficed, then vocal remonstrances and upbraidings sufficed, but in the later ages (of Kali) corporal punishment and death sentence have to be resorted to and that some people are not deterred even by the fear of death sentence.

A few remarks will be made on each of the several modes of punishment. The sentence of death was, acc. to Kām. XIV. 16, Śukra IV. 1. 93, to be avoided even in the gravest offences

636. राज्यकामुकमन्तःपुरप्रधर्षकमटव्यमित्रोत्साहकं दुर्गराष्ट्रदण्डकोपकं वा शिरोहस्तप्रादीपिकं घातयेत्। ब्राह्मणं तमः प्रवेशयेत्। अर्थशास्त्र IV. 11.

636 a. दस्यून्निहन्ति वै राजा भूयसोऽथाप्यनागसः। भार्या माता पिता पुत्रो हन्यते पुरुषेण वै॥ न मूलघातः कर्तव्यः &c. शान्ति 268. 10-11.

except for the offence of subverting the state.[637] Viṣṇu Dh. S. V. 1 provides that all persons except brāhmaṇas guilty of the mahāpātakas may be sentenced to death. But Manu IX. 236 says that this extreme penalty was to be awarded only if they performed no prāyaścitta. Kauṭ. (IV. 11) prescribes death sentence for causing the death of any one with a sharp weapon. Vṛddha-Hārīta (VII. 190) prescribes it for incendiaries, poisoners, murderers, robbers, bad characters, rogues and those guilty of grave sins. The death sentence was carried out in various ways such as by giving poison or by trampling at the feet of an elephant, or by a sharp weapon (like a sword), by being burnt or drowned[638]. Impalement was a punishment prescribed by Manu IX. 276 for thieves guilty of housebreaking by night (after first cutting off their hands), by Yāj. II. 273 for those who made another a captive or stole horses and elephants or killed another by the use of force and by Vṛddha-Hārīta VII. 202 for the murderer of a brāhmaṇa or for one who killed a woman, a child or a cow. Death sentence by being trampled under the feet of an elephant continued up to the times of the Marathas. The Daśakumāracarita 4th Ucchvāsa shows that a thief could be trampled upon by an elephant by way of punishment. Vide ' Selections from Peshwa's Daftar ' (edited by Mr. G. S. Sardesai) vol. 43 No. 143 p. 114 (dated 7–9–1775 A. D.), where out of seven dacoits of the *Berad* caste two were ordered to be trampled to death at the feet of an elephant[639] and five were ordered to be simply beheaded. Death sentence is said by the Daṇḍaviveka (p. 20) to be simple *śuddha*), which is of two kinds, *avicitra* when the offender is beheaded (with a sword), and *citra* or *vicitra* (when the offender is impaled or burnt) and it is *miśra* (when his hands or feet or other limbs are cut off and then he is killed)[640]. Simple death

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637. महत्स्वप्यपराधेषु दण्डं प्राणान्तिकं त्यजेत् । ऋते राज्यापहारात्तु शुक्लदण्डः प्रशस्यते ॥ काम. XIV. 16. This is q. by बुध. p. 61 verse 346.

638. विषेषु (?) दन्तिभुजगशस्त्रानलजलादिभिः । पापानां प्राणहरणं वधदण्डः प्रकीर्तितः ॥ मानसोल्लास II. 20, verse 1287, p. 144.

639. In ' Pandyan Kingdom ' by Prof. K. A. Nilkant Sastri p. 224 the sentence for the murderer of a brāhmaṇa is shown to have been that of being tied to the leg of a he-buffalo and being dragged by it.

640. The word ' śuddha-vadha ' is used by Manu IX. 279 and the words ' śuddha ' and ' citra ' occur in Kauṭilya IV. 11 and also in Śānti 85. 22 राज्ञो वधं चिकीर्षेद्यस्तस्य चित्रो वधो भवेत् । आजीविकस्य स्तेनस्य वर्णसङ्करिकस्य च ॥

is prescribed by Manu IX. 271 for those who abet thieves by giving them subsistence, instruments of house-breaking or asylum. If a man of a low caste had sexual intercourse with a woman of a higher caste (with or without her consent) or kidnapped a maiden he was to be sentenced to death (Manu VIII. 366, Yāj. II. 286–288, 294). Vas. XXI. 1–5 prescribed for a śūdra, vaiśya or kṣatriya guilty of adultery with a brāhmaṇa woman the horrible punishment of being burnt to death after being respectively covered with *vīraṇa* grass, with red *darbhas* and *śara* leaves respectively and similar punishment for a śūdra paramour of a kṣatriya or vaiśya woman and for a vaiśya paramour of a kṣatriya woman. The consenting woman (adulteress) was, acc. to Vas. XXI. 1–3, to be shaved, to have her head anointed with clarified butter and to be paraded naked on an ass and left to die on the Great Journey, while, acc. to Gaut. XXIII. 14 and Manu VIII. 371, an adulteress, vain of her charms or the wealth of her parents, was to be openly devoured by dogs, if her paramour was a man of lower caste. Śaṅkha[641] prescribes this punishment (of being devoured by dogs) for a woman's paramour of a lower caste and for the erring woman death by burning. Vṛddha-Hārīta VII. 192 prescribes that in the case of a woman who is a confirmed adulteress, or who destroys her foetus, her husband should have her ears, nose and lips cut off and then she should be banished and verses 220–221 prescribe death by being burnt with grass (kaṭāgni) for those guilty of incest. These severe penalties for adultery were very much relaxed and softened by later smṛti writers as is shown in H. of Dh. vol. II. pp. 571–573. A man who made a breach in the embankment of a lake or tank (and thereby caused it to become dry) may be sentenced to death by drowning (Manu IX. 279) or a woman who was extremely wicked (such as one who killed her own child in the womb) or who murdered a man or who destroyed the embankments of a tank may have a stone tied round her neck and be drowned, provided she be not pregnant at the time of the sentence (Yāj. II. 278). Yāj. II. 279 (=Matsyapurāṇa 227. 200) prescribes death by being gored by the horns of bulls (after the nose, lips, ears and hands are cut off) for a woman who is guilty of poisoning (the food or drink of another) or who is guilty of incendiarism or who kills her husband, elders

641. श्रेयसः शयनशायिनं राजा [illegible] श्वभिः खादयेत्काष्ठैश्चैनां दहेत् । शङ्ख quoted by वि. र. p. 396.

or her own child (provided she is not pregnant)[642]. Yāj. II. 282 provides death by being burnt with the fire of straw for those who set fire to growing crops, houses, forests, village, pastures and threshing floors or who approach the queen. Nār. (pāruṣya, verse 31) prescribes that one who strikes with a weapon the king, even though the latter be at fault, should be impaled and roasted in fire. These examples are enough to convey an idea of the crimes for which the sentence of death was provided in some of the ancient smṛtis. Manu VIII. 272, Nār. (pāruṣya 24), Viṣṇu Dh. S. V. 24 prescribe the pouring of boiling oil in the mouth and ears of a śūdra who through insolence tries to expound dharma to brāhmaṇas. Cutting off limbs as a punishment (particularly hands and feet or fingers) was common in the case of thieves, pickpockets and cut-purses (Manu IX. 276–277, Nār., pariśiṣṭa verse 32, Yāj. II. 274). Excision of the tongue was the sentence when a śūdra abused a brāhmaṇa or a kṣatriya by falsely charging him with some grave sin (Āp. Dh. S. II. 10. 27. 14, Manu VIII. 270, Nārada, pāruṣya 22), when a śudra loudly repeated the Veda along with twice-born persons (Gaut. XII. 4), when a person abused the king (Nār., pāruṣya 30), when a person repeatedly proclaimed what was disliked by the king or divulged the secret policy of the king (Yāj. II. 302). Excision of the male organ was prescribed for a śūdra who sexually approached a woman of the three higher varṇas (Gaut. XII. 2), for any one guilty of the rape of another's wife (Vṛddha-Hārīta VII. 201 and also confiscation of all property), for any one guilty of incest or intercourse with mother, mother's sister, paternal aunt, sister,

642. The general rule was that women were not to be killed on any account. Vide H. of Dh. vol. II, pp. 575, 593–94. Certain offences were exceptions. Even as to them Vas. XXI. 10 and Yāj. I. 72 suggest another and very mild alternative viz. abandonment (*tyāga*), when a woman conceives from intercourse with a man of lower varṇa or when a woman was guilty of killing her husband or foetus. Acc. to the Mit. on Yāj. III. 268 the king appears to have had to undergo some expiation for ordering the death of a guilty woman. In the 18th century the famous judge of the Peshwa's court, Rāmśāstri Prabhuṇe, ordered a woman guilty of a brāhmaṇa's murder to undergo only the expiation of circumambulating the holy shrine and hill of Tryambakeśvara near Nasik ('Selections from Peshwa's Daftar', vol. 43 No. 156 pp. 121–122). Under sec. 382 of the Indian Criminal Procedure Code 'if a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed and may, if it thinks fit, commute the sentence to transportation for life'.

the wife of an uncle, friend or pupil, daughter, daughter-in-law, teacher's wife, a woman come for refuge, the queen, an ascetic woman, a wet-nurse and any chaste woman or a woman of a higher varṇa (Nār., strīpuṁsayoga 73–75). The nose, the ears and the hands were cut off in the case of an offender guilty of selling false gold or forbidden flesh such as that of a dog (Yāj. II. 297). For branding, vide Gaut. XII. 44, Baud. Dh. S. I. 10. 19, Nār. (sāhasa 10), Manu XI. 237 (=Matsya 227. 16), Viṣṇu Dh. S. V. 3–7. The Daṇḍaviveka (p. 47) states that branding was to be resorted to if the proper penance was not performed and if the offence was intentional. Yāj. II. 202 provides branding for a gambler using false dice and (II. 294) for persons of the three higher *varṇas* having intercourse with a very low caste woman and Dakṣa VII. 33 prescribes it for an ascetic giving up his duties. The Rājataraṅgiṇī mentions (VI. 108–112) that king Yaśaskara (939–948 A. D.) of Kashmir branded on a brāhmaṇa's forehead the mark of dog's foot. Keśavapaṇḍita in his Daṇḍanīti-prakaraṇa (p. 6) quotes the author of the Vaijayantī (Nanda-paṇḍita) to the effect that the making of marks was to be effected with the juice of the marking nut in the case of brāhmaṇas and with a red-hot iron *śalākā* in the case of others. In England about a hundred years ago branding for desertion from the army was practised. Manu VIII. 370 prescribes the shaving of the head as a punishment for a woman who pollutes a maiden, Nār. (śāhasa 10) prescribes it for a brāhmaṇa who is not sentenced to death on account of his caste, Śaṅkha-Likhita (q. by Aparārka p. 807) for one who abuses officers, brāhmaṇas and elders. Megasthenes (Fragment XXVII. p. 72) notes ' If one is guilty of a very heinous offence the king orders his hair to be cropped, this being a punishment to the last degree infamous '. Imprisonment for life is prescribed by Viṣṇu V. 71 for striking out both eyes of a man and by Śukra IV. 1. 88 (for repeating an offence more than three times) For imprisonment with labour, vide Śukra IV. 1. 92 and 108–109. Flogging was prescribed [643] by Vishnu Dh. S. V. 105 for a woman.

643. The punishment of whipping is allowed in England for several offences; vide 'Laws of England' (ed. by Lord Hailsham, vol. IX, pp. 229–230). In India under the Prisons Act (IX of 1894) by section 46 whipping is allowed for certain prison offences and under the Whipping Act (IV of 1909) whipping is awarded for certain offences such as theft, house-breaking, dacoity, rape and for juvenile offenders. In modern times many persons interested in criminology and penology condemn most strongly the stentences of death and whipping. परतन्त्रास्तु ये केचिद् दासत्वे ये च संस्थिताः। अनीशास्ते तु निर्दिष्टास्तेषां दण्डस्तु ताडनम्। स्त्रीबालोन्मत्तवृद्धानां दरिद्राणां तु रोगिणाम्। शिफाविदलरज्ज्वाद्यैर्विदध्यान्नृपतिर्दमम्॥ कात्या. q. in व्यव. नि. pp. 531–532.

in her monthly course touching intentionally members of the higher castes. It was also prescribed for offenders who were slaves or who were dependents and for women, minors, lunatics, old men, poor men and those suffering from diseases (Kāt.). The punishment of banishment was prescribed for brāhmaṇas guilty of the gravest offences meriting death sentence (Gaut. XII. 44, Manu IX. 241, VIII. 380, Viṣṇu Dh. S. V. 3 and 8, Baud Dh. S. I. 10. 19, Yāj. II. 270). It was often associated with branding. Banishment is also prescribed by Yāj. I. 339 for officers taking bribes (and also confiscation of all wealth), for a perjured brāhmaṇa witness (Yāj. II. 81), for one who embezzles the money of a corporation or transgresses the conventions agreed upon by a guild or village &c (Yāj. II. 187, Manu VIII. 219, Viṣṇu Dh. S. V. 167–168), for playing with false dice (Yāj. II. 202 and Nār., dyūtasamāhvaya 6), for a brāhmaṇa guilty of very heinous offences[644] (Śānti 14. 116). Śukra (IV. 1. 98–108) contains a long list of offenders that deserve to be sentenced to banishment. Confiscation of all property was the punishment for several offences such as the commission of the *mahāpātakas* by persons other than brāhmaṇas, provided they committed them unintentionally (Manu IX. 242), for perjury, for taking bribes by *sabhyas* (Viṣṇu Dh. S. V. 179–180). Nār. (prakīrṇaka 10–11) provides a humane rule that even when the king orders the confiscation of all the property of an offender he should not deprive the offender of the tools of his trade or the tools of his craft, such as arms in the case of a soldier, materials of art in the case of artisans, ornaments of courtezans, musical instruments of musicians. Śaṅkha-Likhita[645] quoted by V. R. p. 656 contain a similar provision. Enhanced punishment was prescribed for committing an offence again. Viṣṇu Dh. S. III. 93 holds that a king should never pardon or let off a man who is guilty of a second

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644. महासाहसिकं विप्रं कृताङ्कं विप्रवासयेत्। शान्ति 14. 116.

645. शिल्पिनः कारवः शूद्रास्तेषां व्यभिचारेष्वपि शिल्पोपकरणानि रक्षेत्। तुलामानप्रतिमानसमुत्थानि वणिक्पथानां, क्षेत्रबीजभक्तगोशकटकर्षकद्रव्याणि कर्षकाणां, वाद्यभाण्डालङ्कारवासांसि रङ्गोपजीविनां, गृहशय्यालङ्कारवासांसि वेश्यानां, शस्त्राणि चायुधोपजीविनां सर्वेषां कारणद्रव्याणि नाहार्याणि राज्ञा। अधार्मिकेण हि पुरुषाः पापबहुलाश्चाविधेयाश्च भवन्ति तेभ्यः पापांशभाग्राजा तस्मात्साधनात्तदुपकरणान् कुर्यात्तन्मूला हि वृत्तिर्भवति। वृत्तिमूलो निवासः। तैर्निवसद्भिः स्फीतं राष्ट्रमुच्यते। शङ्खलिखित q. by वि. र. p. 656, which explains 'व्यभिचारेषु सर्वस्वापहारयोग्येषु अपराधेषु ... भक्तं कृषिसिद्ध्यर्थमन्नं कर्षणद्रव्यं हलादि'. Compare section 60 (a, b, c) of the Indian Civil Pro. Code for the property which is not liable to attachment and sale in execution of a decree.

offence (though a first offender may be let off with a mere admonition). Kauṭ. IV. 10 states that when a person is a first offender as to theft at a holy place or as a pickpocket or house-breaking from the roof, his thumb and index finger may be cut off or he may be fined 54 paṇas, for a second offence all fingers may be cut or a fine of 100 paṇas may be levied; for a third offence the punishment is cutting of the right hand or a fine of 400 paṇas and for the fourth death in any way the king may direct. Manu IX. 277, Yāj. II. 274, Viṣṇu Dh. S. V. 136 contain a similar rule. Vide Āp. Dh. S. II. 10. 27. 11-13 for adultery. If several people conspire together and kill or injure a single man the punishment was to be double of what a single man committing the same offence would receive (Kauṭ. III. 19, Yāj. II. 221, Viṣṇu Dh. S. V. 73). As indicative of the superstitions of ancient (and even modern) times punishment for witchcraft may be mentioned. Kauṭ. IV. 4 prescribes[646] the employment of spies to find out those who profess to use charms for securing illicit love and banish them and adds that persons who are engaged in witchcraft to injure others may be similarly dealt with. In the times of the Peshwas wizards[647] and raisers of ghosts appear to have been frequent and were severely dealt with by the people themselves by being put to death, but the State generally confiscated the property or cut off the alleged wizard's finger. Up to the beginning of the 18th century even in England wretched old women were frequently convicted as witches and hanged[648]

646. यं वा मन्त्रयोगमूलकर्मभिः श्माशानिकैर्वा संवननकारकं मन्येत तं सत्री ब्रूयात् अमुष्य भार्यां स्नुषां दुहितरं वा कामये सा मां प्रतिकामयतामयं चार्थः प्रतिगृह्यतामिति । स चेत्तथा कुर्यात्संवननकारक इति प्रवास्येत । तेन कृत्याभिचारशीलौ व्याख्यातौ । कौटिल्य IV. 4.

647. Vide 'Selections from Peshwa's records' vol. 43 pp. 25-26 about frequent witchcraft in Kolhapur territories (and a wizard of the *mang* caste being impaled), p. 32 (for a woman who was killed as a witch by the Patils without Government orders) and Rao Bahadur Wad's extracts from Peshwa's Diaries vol. II. p. 7 (for confiscation of Vatan and razing to the ground the house of a ghost-raiser) and vol. VIII. p. 147 (for cutting off a finger).

648. Vide e. g. 6 State Trials p. 647 (a trial of witches held in 1665 A. D. before Sir Matthew Hale C. B. who condemned them to death) and 8 State Trials p. 1017 (in 1682) and Stephens' 'History of Cr. Law of England' vol. II. p. 435 for numerous cases of trials for witchcraft between 1653 to 1712 A. D. Vide Lea's 'Superstition and force' (ed. of 1878) p. 425 as to torture of heretics for extracting confessions expressly allowed by Papal Bulls and pp. 506-507 for torture being allowed in sorcery and witchcraft cases in England up to the 17th century. Vide a very discerning and interesting paper on 'Witchcraft in Ancient India' by Dr. Winternitz in Indian Antiquary, vol. 28 pp. 71-83.

Manu IX. 290 (= Matsya 227. 183) prescribes the very mild punishment of the fine of 200 paṇas for all incantations intended to destroy life, for magic rites and various kinds of raising ghosts and goblins. Medhātithi and Kullūka say that if the magic rites are successful the punishment would be that for murder. Bṛ. (S. B. E. vol. 33 p. 361 verse 16) provides banishment for those who practise incantations with roots.

Kauṭ. in II. 5 prescribes[649] that a jail should be constructed in the capital provided with separate accommodation for men and women kept apart and well guarded at the entrances. He further provides[650] that among the duties of the *nāgaraka* is to let out of the jail on the day of the festival of the birth constellation of the king and on the full moon day (of every month) such persons as are young, very old, suffering from diseases and helpless, or those who are charitably disposed may pay the fines or others bind themselves by an agreement to pay in cash the fines for the offences for which the prisoners are jailed (and then the prisoners may be released). The persons jailed may be set free on their working every day or once in five days or by undergoing corporal punishment (whipping &c.), paying fines in cash. Prisoners may be released from jail (as a favour) on the conquest of fresh territory or on the coronation of the Crown Prince or on the birth of a son to the king. In the Delhi Topra Pillar Edict No. IV (Corpus I. I vol. I. p. 123 and E. I. vol. II. pp. 253–54) Emperor Aśoka promulgates that he gives three days' respite to prisoners on whom judgment has been passed and who have been condemned to death and in the 5th Pillar Edict of Delhi Topra (Corpus I. I. vol. I. p. 126–128 and E. I. vol. II. pp. 258–259) he says that he let off prisoners 25 times in 26 years (which is in conformity with Kauṭilya's dictum cited above). In the first separate Edicts at Dhauli Aśoka addresses his officers of justice in the capital (*Nagaravyāvahārikāḥ*) that they should so act that even a single person should not unnecessarily suffer imprisonment or pain. In spite of this if we are to believe Yuan Chwang, Aśoka in his early career was most cruel and had constructed a jail

649. विभक्तस्त्रीपुरुषस्थानमपसारतः सुगुप्तकक्ष्यं बन्धनागारं कारयेत् । कौटिल्य II. 5.

650. बन्धनागारे च बालवृद्धव्याधितानाथानां च जातनक्षत्रपौर्णमासीषु विसर्गः पुण्यशीलाः समयानुबद्धा वा दोषनिष्क्रयं दद्युः । दिवसे पञ्चरात्रे वा बन्धनस्थान् विशोधयेत् । कर्मणा कायदण्डेन हिरण्यानुग्रहेण वा ॥ अपूर्वदेशाधिगमे युवराजाभिषेचने । पुत्रजन्मनि वा मोक्षो बन्धनस्य विधीयते ॥ कौटिल्य II. 36.

that was called Hell-prison of Aśoka (vide Watters, vol. II. pp. 88–90). Manu IX. 288 requires that all jails should be so built as to abut on the royal road where the offenders suffering pain and in bad condition would be seen by all (in order to deter others from committing offences). The Śilappadikāram, one of the earliest works in Tamil, mentions the release of prisoners on the king's birthday and at the founding of a temple (pp. 38–39 of Mr. Dikshitar's translation). Kālidāsa in the Mālavikāgnimitra[651] (Act IV) makes the Vidūṣaka report to the king, 'the astrologers think that, as the constellation on which Your Majesty was born is in evil aspect now, let all prisoners be released'. Kālidāsa (in Raghu 17. 19) alludes to the release of prisoners and the commutation of death sentences at the time of the coronation of king Atithi. The Bṛhat-Saṁhitā (47·81) states that when the king takes the *Puṣyasnāna* (ceremonial bath on the day on which the moon is in conjunction with the Puṣya constellation in the month of Pauṣa or every month) he may order release except as to those prisoners who were convicted for offences connected with his own person or with the harem.[652] In the Mṛcchakaṭika (Act X) also various occasions for the release of prisoners are mentioned by the executioner. The Harṣacarita[653] (II. 2nd para) refers to the usage of releasing prisoners at the time of a coronation and on the birth of Harṣa (IV.). The prisoners are described in the latter passage as having long beards and as darkened by the accumulation of dirt on their bodies.

Manu IX. 243 enjoins upon the king not to appropriate to himself the property of a man guilty of the mahāpātakas (by way of fine or confiscation) and warns that if he takes it out of greed he is tainted by the guilt of the offender. Manu (IX. 244–45) recommends that such fine may be cast into water as an offering to Varuṇa (the Lord of waters) who wields sceptre even over kings or may be bestowed on learned and virtuous

651. दैवचिन्तकैर्विज्ञापितो राजा । सोपसर्गं वो नक्षत्रं सर्वबन्धनमोक्षः क्रियतामिति । मालविकाग्निमित्र IV. after verse 5; बन्धच्छेदं स बद्धानां वधार्हाणामवध्यताम्। धुर्याणां च धुरो मोक्षमदोहं चादिशद्गवाम् ॥ रघु. 17. 19.

652. बन्धनमोक्षं कुर्यादन्यत्र दोषकृद्वर्जम् । बृहत्संहिता 47. 81, on which उत्पल remarks ' नृपशरीरे अन्तःपुरे वा यैर्दोषः कृतः &c.'

653. अभिनवोदितश्च सर्वस्यां पृथिव्यां सकलकुसुमबन्धनमोक्षमकरोत्प्रतपन्नुष्णसमयः । हर्षचरित II. para 2; प्रलम्बश्मश्रुजालजटिलाननानि बहलमलपङ्ककलङ्ककालकायानि नश्यतः कलिकालस्य बान्धवकुलानीवाकुलान्यधावन्त मुक्तानि बन्धनवृन्दानि । हर्षचरित IV.

brāhmaṇas, that are lords of the whole world. Manu (IX. 246–247) further states that in the country where the king avoids taking the property of very wicked sinners men become long-lived, crops spring up, there is no infant mortality &c.

Generally no one was allowed to take the law into his own hands except as to recovery of debts (which will be discussed below). But Nār. (pāruṣya[654] 11–14) contains the following remarkable passage : ' If a *śvapāka*, a *meda*, a *caṇḍāla*, one devoid of a limb, one gaining livelihood by killing animals, an elephant driver, *vrātya* (i. e. deprived of caste for non-performance of *upanayana*), a slave, one who disregards his elders or spiritual teacher—if these should transgress the limits they must observe towards their superiors, they should be punished then and there by the person offended and the person so doing is not regarded as committing an offence (equal to theft). Should any such low person insult another (who is his superior) that man himself shall punish him and the king has nothing to do with the punishment. These people are like the refuse (dregs) of humanity and their property also is impure. The king is entitled to inflict bodily punishment (whipping), but he should not inflict fines on them '. The Mit. on Yāj. II. 270 quotes a text of Vṛddha-Manu of similar import and explains that the words ' the king should avoid taking fines ' refer to cases of grave offences[655].

Something must be said about the law of Limitation. In the smṛtis and digests rules of Limitation play very little part for several reasons. As on spiritual grounds, which will be set out under the title of ṛṇādāna, not only the debtor, but also his sons, grandsons and great-grandsons were liable to pay a debt (Mit. on Yāj. II. 50), there was no scope at all for prescribing any period of limitation so far as recovery of debts was concerned. Unpaid purchase money was treated as a debt. In other matters also the smṛtis and dharmaśāstras, under the influence of religious and other-worldly considerations always lean against

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654. श्वपाकमेदचण्डालव्यङ्गेषु वधवृत्तिषु । हस्तिपव्रात्यदासेषु गुर्वाचार्यातिगेषु च ॥ मर्यादातिक्रमे सद्यो घात एवानुशासनम् । न च तद्दण्डपारुष्ये स्तेयमाहुर्मनीषिणः ॥ यमेव ह्यतिवर्तेत नीचः सन्तं जनं नृषु । स एव विनयं कुर्यान्न तद्विनयभाङ् नृपः ॥ मला ह्येते मनुष्येषु धनमेषां मलात्मकम् । अपि तान्घातयेद्राजा नार्थदण्डेन दण्डयेत् ॥ नारद (पारुष्य 11–14). For श्वपाक, मेद, चण्डाल and व्रात्य vide H. of Dh. vol. II pp. 97, 92, 81, 378 respectively.

655. यत्पुनर्वृद्धमनुवचनं ' अन्यायोपात्तवित्तत्वाद्धनमेषां मलात्मकम् । अतस्तान् घातयेद्राजा नार्थदण्डेन दण्डयेत् ॥ ' इति तदपि महापराधविषयम् । मिता. on या. II. 270.

allowing mere lapse of time to prevent a man from asserting his just rights. But rarely there were writers who were more secular and laid down periods of limitation. For example, Kauṇḍinya[656] (quoted in V. Mātṛkā p. 341) holds that a debt not claimed for ten years cannot be recovered except when the creditor was a minor or very old or was a woman or was suffering from disease or there was confusion due to invasion or (the creditor or debtor) had left the country. Some important rules on the law of Limitation are set out here in one place :

1. Manu VIII. 148, Yāj. II. 24, Gaut. XII. 35, Vas. 16. 17, Nār. IV. 79 and others state that enjoyment of immovable property in the presence of the real owner without protest from him causes loss of ownership and ten years' enjoyment of movables under similar circumstances leads to the same result. There are various views on the subject which have already been indicated above (on pp. 322–325).

2. An exception to the above rule is stated to be that no limitation applies to pledges. boundaries, deposits, and to the property of minors, idiots, the State, women and brāhmaṇas learned in the Vedas. Vide Gaut. XII. 35–36, Vas. 16. 18, Manu VIII. 149, Yāj. II. 25, Nār. IV. 81, Bṛ. (S. B. E. vol. 33 p. 312 verse 21).

3. As the rules about deposit are extended by Nār. (upanidhi verse 14) to articles borrowed or given to artisans for being worked, and to *anvāhita, nyāsa* and *pratinyāsa*, in the case of these also there would be ordinarily no bar of limitation. Vide Manu VIII. 145–146, Yāj. II. 58, Viṣṇu Dh. S. VI. 7–8. Here also there are dicta to the contrary. Marīci (q. in Sm. C. II. p. 69 quoted above on p. 326) says that cows, beasts of burden, ornaments and the like borrowed in a friendly way would have to be returned (at the latest) in four or five years, otherwise they are lost. Acc. to Vyāsa[657] this rule would not apply to what is lent to

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656. दशवर्षोपेक्षितमृणं न ग्राह्यमन्यत्र बालवृद्धव्याधितयोषिद्देशत्यागपरचक्रविभ्रमेभ्यः। कौण्डिन्य quoted in व्य. मा. p. 341 ; compare the very similar words of कौटिल्य (III. 16). 'यत्स्वं द्रव्यमन्यैर्भुज्यमानं दशवर्षाण्युपेक्षेत हीयेतास्य अन्यत्र बालवृद्धव्याधितव्यसनिप्रोषितदेशत्यागराज्यविभ्रमेभ्यः। विंशतिवर्षोपेक्षितमनुवासितं वास्तु नानुयुञ्जीत'। Is कौण्डिन्य a misreading for कौटिल्य in the व्यवहारमातृका ?.

657. पाञ्चालधर्मेण यद्भुक्तं श्रोत्रियै राजपूरुषैः। सुहृद्भिर्बान्धवैर्वापि न तद्भोगेन हीयते॥ व्यास in स्मृतिच॰ II. p. 69.

friends, relatives, brāhmaṇas and the servants of the king on their request.

4. It appears that a period of twenty years was prescribed for avoiding a document on the ground of patent defects by one who had seen it and was affected by it. Vide Kāt. 298–300. Similarly when a thing is enjoyed for twenty years on the basis of a writing in the presence of an opponent able (to challege the enjoyment and the writing) then the writing becomes unassailable (even if the witnesses are all dead or there is no other document for comparison). Vide Kāt. (299)[658].
5. A deed settling a boundary dispute becomes unassailable after twenty years. Vide Kāt. (301).[659]
6. No suit can lie on a document executed beyond thirty years, which has never been seen by any body nor read out (by the creditor to any body) even though the attesting witnesses may be living. Vide Bṛ. (S. B. E. vol. 33 p. 308 verse 29)[660].

In the preceding pages we have passed in review the law of judicial procedure, evidence and limitation. A careful perusal will convince any unbiassed reader that the Dharmaśāstras evolved during the course of centuries an indigenous system of judicial procedure of a high order. Nārada, Bṛhaspati and Kātyāyana represent the high water mark of ancient Indian adjective law. These writers flourished before 600 A. D. and the first two of them are probably older by several centuries than that date. They present an orderly system providing for the appointment and duties of judges, proper pleadings, the law of evidence and limitation, decrees and their execution, crimes and punishments. This system compares most favourably with any system of judicial procedure prevalent anywhere in the West up to the 18th century A. D.

658. दृष्टे पत्रे स्फुटान् दोषान्नोक्तवानृणिको यदि । ततो विंशतिवर्षाणि स्थितं पत्रं स्थिरं भवेत् ॥ कात्या. (298) q. by व्य. मा. p. 340, परा. मा. III. p. 136; शक्तस्य संनिधावर्थो येन लेख्येन भुज्यते । वर्षाणि विंशतिं यावत्तत्पत्रं दोषवर्जितम् ॥ कात्या. 299 q. by मिता. on या. II. 24, अपरार्क p. 690, व्य. मा. p. 340.

659. सीमाविवादे निर्णीते सीमापत्रं विधीयते । तस्य दोषाः प्रवक्तव्या यावद्वर्षाणि विंशतिः ॥ कात्या. 301 q. by मिता. on या II. 24, अपरार्क p. 691, परा. मा. III. p. 136.

660. लेख्यं त्रिंशत्समातीतमदृष्टाश्रावितं च यत् । न तत्सिद्धिमवाप्नोति तिष्ठत्स्वपि हि साक्षिषु ॥ बृह. q. by अपरार्क p. 692, व्य मा. p. 340.

CHAPTER XVI

CONTRACTS

There are only three titles of law, viz. recovery of debts, the relation of husband and wife (*strīpuṁsayoga*) and partition of wealth (*dāyabhāga*) that are of importance to modern Hindus, since to a very large extent they are even now governed in these matters by the ancient Hindu Law as interpreted by the commentators. These three topics therefore have to be described in detail while other titles will not and cannot be allowed to occupy much space. In almost all smṛtis and digests of Hindu Law *ṛṇādāna* (recovery of debts) is treated of first. Therefore here also that subject will be taken up first. A good deal of the matter falling under the title of the relation of husband and wife has already been dealt with in the 2nd volume of the History of Dharmaśāstra pp. 427-636. The topic of *dāyabhāga* will be dealt with last of all, the other topics being taken up in the same order as in Manu. Many of the *vyavahārapadas* are concerned with the law of contracts in various aspects, viz. the contract of debt, of pledge or mortgage, of bailments, of sale, of partnership, of hire and service.

Our writers do not set out with an analysis of the conception of contract in general. They had before them the ancient 18 titles of law, many of which related to various kinds of contracts and therefore they take up one title after another, in the order contained in Manu or in Nārada (as the Sm. C. II. p. 206 expressly says). But it is not to be supposed that they did not evolve certain general principles about contracts. They do say a good deal about the competence of persons to enter into contracts, about fraud vitiating all contracts, about damages for breach of contract &c. Sim ilarly the dharmaśāstras do not lay down a general Code of rules applicable to all transfers of immovable property, nor do they treat of transfers by way of sale, mortgage or gift in separate sections. What they have to say on these transfers is tacked on to some *vyavahārapada* e. g. they speak about sales and exchanges of land under asvāmi-vikraya and sīmāvivāda, about gifts under dattāpradānika and about mortgages under ṛṇādāna. As this work has to represent what the ancient law was like the same

arrangement has been followed here. Similarly the law of crimes is not to be found in one place. It is scattered under different titles of law such as vākpāruṣya, daṇḍapāruṣya, sāhasa, strīsaṅgrahaṇa and steya; nor is there a complete analysis of intention or motive or of the right of private defence, although all these subjects are briefly dealt with in the smṛtis in different places.

A great deal has been said by ancient writers about what persons are competent to enter into transactions (vyavahāra) The Arthaśāstra (in III. 1)[661] has a lengthy disquisition on it. Briefly, it holds that dependent persons, minors, extremely old people, those charged with grave sins, *sannyāsins*, persons who are devoid of a limb and those who are addicted to vices (like drinking and whoring) are incompetent and agreements made with such people are invalid. Among dependent people Kauṭilya mentions a son when the father is alive (and manages the affairs), a father when he has a son (who manages the family affairs), a brother who has left the family, a younger brother whose share has not been separated, a woman whose husband or son is alive, a slave or a hired servant. He states that these may enter into binding agreements if those on whom they are dependent authorize them to do so. He further says that contracts made by persons that are at the time of making them intoxicated or are under the influence of wrath or are distressed or are of unsound mind or under duress (imprisoned or confined) are invalid. Yāj. (II. 31–32) concisely puts down the same propositions by saying that all transactions brought about by force or fraud should be declared (by the king) to be unenforceable, so also those entered into by women or the other persons specified above or entered into at night, or in the interior of the house or outside the town or village (in a forest &c.) or with one's enemy or by persons unconnected with or unauthorized by the persons who are to be bound by them.[662] Manu (VIII. 165 and 168) also declares that all transactions (such as sale, mortgage, gift) brought about by force or fraud are

661. अपाश्रयवद्भिश्च कृताः, पितृमता पुत्रेण, पित्रा पुत्रवता, निष्कुलेन भ्रात्रा, कनिष्ठेनाविभक्तांशेन, पतिमत्या पुत्रवत्या च स्त्रिया, दासाहितकाभ्याम्, अप्राप्तातीतव्यवहाराभ्याम्, अभिशस्तप्रव्रजितन्यङ्गव्यसनिभिश्चान्यत्र निसृष्टव्यवहारेभ्यः । तत्रापि क्रुद्धेनार्तेन मत्तेनोन्मत्तेनापगृहीतेन वा कृता व्यवहारा न सिध्येयुः । अर्थशास्त्र III. 1.

662. It should be noted that the rules of Kauṭ. and Yāj. are in remarkable agreement with sections 11 to 19 of the Indian Contract Act (IX of 1872).

null and void. Nār. IV. 26–42 treat this subject[663] exhaustively. Some of Narada's dicta are interesting. He says: 'in this world three are independent viz. the king, the Vedic teacher and the head of the house in his own house (32). Wives, sons and slaves are not independent; the head of the house has independent power as to what belongs to him by inheritance (34).' Kāt. (497) also prescribes that one should not give a loan to women, minors or slaves. When the texts say that women are incompetent to make contracts, what is meant is that they cannot make contracts binding on their husbands or family or against the family property. Women are not inherently incompetent to deal with their own separate property except that the husband has some control (these matters will be discussed at length later on under strīdhana). Another proposition laid down by Yāj. II 23, Nār. IV. 97, Kāt. (517) and others[664] is that in all transactions relating to a debt or any other title of law the last act is the deciding factor; but in the cases of gift, pledge or purchase each prior transaction (of gift &c.) is of superior efficacy to the succeeding one.[665]

After the establishment of British rule in India during about 150 years numerous publications dealing with Hindu customs and usages and the Hindu law of debts, contracts, adoption, family rights, partition and inheritance have been published. It is impossible to give an exhaustive list of these nor is it necessary to do so. Most of them have now only an academic or historic interest. But a few of them must be mentioned for their worth, for purposes of study and for a knowledge of the modern Hindu Law as administered by the British Indian courts They are: Bannerjee's 'Hindu Law of Marriage and stridhan'

663. The Vyavahāramātṛkā p. 288 quotes five verses as from Kauṇḍinya which are almost the same as Nārada IV. 29, 30, 39, 34, 40 respectively. The learned editor does not notice this.

664. ऋणादिषु सर्वेषु बलवत्युत्तरा क्रिया। प्रतिग्रहाधिक्रीतेषु पूर्वा पूर्वा बलीयसी॥ नारद IV. 97 ; आधिमेकं द्वयोर्यस्तु कुर्यात्का प्रतिपद्यते। तयोः पूर्वकृतं ग्राह्यं तत्कर्ता चौरदण्डभाक्॥ कात्या. 517 q. by स्मृतिच. II. p. 144, वि. र. p. 35, स. वि. p. 237.

665. For example, if A establishes that he lent a sum to B but if the latter establishes that he repaid the amount, this later fact of repayment is decisive of the dispute if A files a suit for recovery of the money. If A mortgages a field to B for a loan and then mortgages the same field to C, the mortgage of B, being prior, is superior to that made in favour of C The same principle is laid down in section 48 of the Transfer of Property Act (IV. of 1882).

(5th ed. of 1923); Colebrooke's Digest of Hindu Law, which is a translation of Jagannātha's Vivādabhaṅgārṇava (3rd ed. of 1864, Madras); the several volumes of the Bombay Gazetteer and the Gazetteers of the other provinces and the Imperial Gazetteer of India ; A. Ghosh's 'Law of endowments' (2nd ed., 1938); Dr. Jolly's Tagore Law Lectures on Partition, Inheritance and Adoption and *Recht* und *Sitte* translated by Prof. Batakrishna Ghosh (1928)); Mayne's Hindu Law (10th ed. of 1938); Mulla's Hindu Law (9th ed. of 1940); K.L. Sarkar's 'Mimansa rules of interpretation'; G.C. Sarkar's Hindu Law and Hindu Law of Adoption (2nd ed. 1916); Rajkumar Sarvadhikari's 'Principles of the Hindu Law of Inheritance' (2nd ed. 1922), Dr. P. N. Sen's 'General Principles of Hindu Jurisprudence' (1918); Steele's Law and custom of Hindu castes' in the Deccan (London, 1868); Stoke's Hindu Law Texts (a work constantly quoted by the Courts and the Privy Council) containing English translations of the Mitākṣarā, the Dāyabhāga, the Vyavahāramayūkha, the Dattakamīmāṁsā, the Dattakacandrikā, the Dāyakramasaṅgraha ; West and Bühler's Digest of Hindu Law.

The idea of the liability to pay off one's debts was developed in India in the most ancient times. In Ṛg. VIII. 47. 17[666] the poet exclaims 'Let us drive away the evil effects of bad dreams as we pay off debts'. In Ṛg. X. 34. 10 (the gambler's lament) it is stated that the gambler, because he owes a (gambling) debt, is afraid and approaches the houses of others at night, desiring wealth '.[667] This indicates that a debtor was afraid of being detained by his creditor in those days. Ṛg. VIII. 66. 10 indicates that money-lenders made a stipulation to receive double of what they lent, 'Indra strikes by his power all *paṇis* who make representations of taking double '.[668] The Ait. Br. 33. 1 (*ṛṇam-asmin san-nayati*)[669] employs the very verb '*san-nayati*' which occurs in Ṛg. VIII. 47. 17. The Atharvaveda VI. 117. 3 and Tai. Br. III. 7. 9. 8 contain the same verse about a man being free from the obligations of this world, the next

666. यथा कलां यथा शफं यथ ऋणं संनयामसि । एवा दुःष्वप्न्यं सर्वमाप्त्ये सं नयामस्यनेहसो व ऊतयः सुऊतयो व ऊतयः ॥ ऋ. VIII. 47. 17.

667. ऋणावा बिभ्यद्धनमिच्छमानोऽन्येषामस्तमुप नक्तमेति । ऋ. X. 34. 10.

668. इन्द्रो विश्वान् बेकनाटाँ अहर्दृश उत क्रत्वा पणीँरभि ॥ ऋ. VIII. 66. 10
The word बेकनाट is very like a *prākrit* word.

669. जायमानो वै ब्राह्मणस्त्रिभिर्ऋणवा जायते ब्रह्मचर्येण ऋषिभ्यो यज्ञेन देवेभ्यः प्रजया पितृभ्य एष वा अनृणो यः पुत्री यज्वा ब्रह्मचारिवासी । तै. सं. VI 3. 10. 5 ; ऋणमस्मिन् संनयत्यमृतत्वं च गच्छति । पिता पुत्रस्य जातस्य पश्येच्चेज्जीवतो मुखम् ॥ ऐ. ब्रा. 33. 1.

world (of pitṛs) and the third world (the world of gods).[670] The Tai. S. (III. 3. 8. 1–2) uses the very word ' kusīda ', which occurs[671] in the Dharmasūtras and smṛtis (for money-lending) when it says, ' O Agni ! whatever debt has not been paid back by me, the tribute that I owe to Yama, here do I make return of it ; may I be freed from that debt ! '. The Śat. Br. XIII. 4. 3. 11 associates *kusīdin* with black magic in the Pāriplava. The Nirukta (VI. 32) while commenting on Ṛg. III. 53. 14 explains the word ' Pramaganda ' occurring therein as ' one who is born of a family that is extremely usurious '.[672] Pāṇini employs the technical word ' uttamarṇa ' (creditor) in his sūtra ' dhārer-uttamarṇaḥ ' (I. 4. 35), he speaks of ' ādhamarṇya ' (the position of a debtor) in II. 3. 70 and the word ' pratibhū ' occurs in Pāṇini II. 3. 39, the word ' vṛddhi ' (interest) in V. 1. 47. Pāṇini (IV. 4. 31) derives the words ' kusīdika ' and ' kusīdikin.' It is noteworthy that Pāṇini does not derive or mention the word *vārdhuṣika*, which is employed by even Āp. Dh. S. and Baud. Dh. S. and which is derived by Kātyāyana (the grammarian) in Vārtika 3 on Pāṇini IV. 4. 30, in which Pāṇini refers to such words as 'dvaiguṇika' or 'traiguṇika' which were applied to people that carried on the condemned methods of money-lending viz. extorting twofold or threefold of the money lent (the sūtra is ' prayacchati garhyam '). Brahmaṇaspati is spoken of as ' one who recovers a debt (*ṛṇam-ādadiḥ*) in Ṛg. II. 24. 13 and the Ādityas as those ' who, themselves being the observers of *ṛta* (the universal Law of Right), collect[673] debts' (Ṛg. II. 27. 4). In Ṛg. VIII. 32. 16 it is said that those priests who extract (and offer) Soma juice do not indeed owe a debt (to the gods). Divodāsa is said in Ṛg. VI. 61. 1 to have been the gift of Sarasvatī to Vadhryaśva as a son to pay off debts (*ṛṇacyutam*)[674]. These passages certainly establish that in the remote ages of the

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670. अनृणा अस्मिन्ननृणाः परस्मिन् तृतीये लोके अनृणाः स्याम । ये देवयाना उत पितृयाणाः सर्वान्पथो अनृणा आ क्षियेम ॥ तै. ब्रा. III. 7. 9. 8, अथर्ववेद VI. 117. 3 (with very slight variations).

671. यत्कुसीदमप्रतीत्तं मयि येन यमस्य बलिना चरामि । इहैव सन्निरवदये तदेतत्तदग्ने अनृणो भवामि ॥ तै. सं. III. 3. 8. 1–2 ; अथर्ववेद VI. 117. 1 closely agrees.

672. मगन्दः कुसीदी माङ्गदो मामागमिष्यतीति ददाति तदपत्यं प्रमगन्दः अत्यन्तकुसीदिकुलीनः । निरुक्त VI. 32.

673. दीर्घाधियो रक्षमाणा असुर्यमृतावानश्चयमाना ऋणानि । ऋ. II. 27. 4.

674. इयमददाद्रभसमृणच्युतं दिवोदासं वध्र्यश्वाय दाशुषे । ऋ. VI. 61. 1.

Ṛgveda it was a firm belief that men were under obligations to gods and pitṛs, which could be fulfilled only by worship (yajña) and by the birth of a son. These passages contain the germ of the doctrine of the three religious and spiritual debts that a man owed to gods, Manes (*pitṛs*) and sages, which he paid off by sacrifices, by the birth of a son and by vedic study (vide Tai. S. VI. 3. 10. 5, Śat. Br. I. 7. 2. 11 and Ait. Br. 33. 1 quoted in H. of Dh. vol. II. pp.270, 560 notes 621 and 1302 and above n. 669). Gradually further universal obligations came to be added to this theory of spiritual debts. The Ādiparva (120. 17–20) holds that men owe four debts, viz the three vedic ones and the fourth to humanity in general (which is paid back by goodness to all) and Anuśāsana 37. 17 raises them to five (adding brāhmaṇas and guests to the well-known three)[675]. It appears to me that this theory of spiritual debts being already in the air, the same sanctity came gradually to be transferred to one's promises to repay monetary debts and carry out other secular engagements. The word *ṛṇa* had been applied both to spiritual and secular debts. It is on account of this that the son was not only desired for repaying the spiritual debt owed to one's ancestors, but he was also expected to free his father (if the father could not himself repay the monetary debt) from the liability he incurred to his creditor. Nār. IV. 5–9 puts this clearly and most emphatically : " fathers desire to have sons for their own benefit thinking in their heart 'he will release me from liability to creditors and debtors' (or probably 'from high or low debts' i. e. spiritual and earthly debts). Three deceased (ancestors) must be honoured (by a man) and he must subsist on three (descendants) that come after him. These (the first three) series of ancestors rely (for repayment) of their twofold debts (spiritual and secular) on the fourth in descent. If a man fails to pay on demand a debt or promised gift, that sum (by the addition of interest) goes on growing till it amounts to a hundred crores and when a hundred crores are reached he is born again and again in the house of his creditor as a slave in order to repay the debt (by his labour). If an ascetic or a brāhmaṇa perpetually keeping the sacred fire (*agnihotrin*) dies

675. ऋणैश्चतुर्भिः संयुक्ता जायन्ते मानवा भुवि । पितृदेवर्षिमनुजैर्देयं तेभ्यश्च धर्मतः ॥ ... यज्ञैस्तु देवान् प्रीणाति स्वाध्यायतपसा मुनीन् । पुत्रैः श्राद्धैः पितॄंश्चापि आनृशंस्येन मानवान् । आदिपर्व 120. 17–20; ऋणमुन्मुच्य देवानामृषीणां च तथैव च । पितॄणामथ विप्राणामतिथीनां च पञ्चमम् । अनुशासन 37. 17.

without discharging his debts, the whole merit due to his austerities and the perpetual tending of fire belongs to his creditors ".[676] Kāt. (551, 591) expresses the same idea but adds that a debtor who has not repaid money borrowed may be born as a slave, a servant, a woman or a beast in the house of his creditor. It was this belief that led to the doctrine of the pious obligation of the son to pay off his father's debts even if he received no property from the father.[677]

Nārada IV. 98 defines '*kusīda*' in a rather obscure verse as 'the receiving of money paid in consequence of the original (amount advanced) and the profit (agreed to be paid) thereon and those are called *kusīdin* who maintain themselves by this occupation'. Bṛhaspati (S. B. E. 33 p. 320 verse 2) derives[678] *kusīda* as 'that is called kusīda, which is taken fourfold or (even) eightfold without any qualm (by a person) from a wretched man who is sinking (or distressed)'. Nār. IV. 110 defines *vārdhuṣa* as the interest (in kind) on grain,[678a] but Āp. Dh. S. I. 6. 18. 22 and Baud. Dh. S. employ the word 'vārdhuṣika' and Āp. Dh. S. I. 9. 27. 10 has a verse in which the word *vṛddhi* occurs. Vas. (II. 41–42 = Baud. Dh. S. I. 5. 93–94) quotes

676. पूजनीयास्त्रयोऽतीता उपजीव्यास्त्रयोऽग्रतः । एतत्पुरुषसन्तानमृणयोः स्याच्चतुर्थकं ॥ तपस्वी चाग्निहोत्री च ऋणवान् म्रियते यदि । तपश्चैवाग्निहोत्रं च सर्वं तद्धनिनां धनम् ॥ नारद IV. 6 and 9 ; पितॄणां सुतभिर्जातैर्दानैर्नैवाधमादृणात् । त्रिमोक्षस्तु यतस्तस्मादिच्छन्ति पितरः सुतान् ॥ उद्धारादिकमादाय स्वामिने न ददाति यः । स तस्य दासो भृत्यः स्त्री पशुर्वा जायते गृहे ॥ कात्या. 551, 591, quoted by Sm. C. pp 168 and 161, परा. मा III. pp. 261 and 263, व्य. प्र. p. 277. Dr. Jolly's translation of Nār. IV. 6 (S. B. E. 33, p. 43) 'three must be reverenced before the rest' does not seem to be correct. What Nār. means is that a man has to offer worship in śrāddha to three ancestors while he himself depends upon (*upajīvyāstrayaḥ*) his three descendants for the piṇḍa (they offer). Upajīvya does not mean 'to be reverenced' but 'to be subsisted on'. The Sm. C. II. p. 161 notes that the verse 'tapasvī &c.' (Nār. IV. 9) occurs in a Purāṇa.

677. स्थानलाभनिमित्तं हि दानग्रहणमिष्यते । तत्कुसीदमिति प्रोक्तं तेन वृत्तिः कुसीदिनाम् ॥ नारद IV. 98 ; The वि. चि. explains: स्थानमवस्थानं मूलधनस्य तस्मिन्सत्येव लाभो वृद्धिस्तदर्थं दानग्रहणम् ।, 'देयद्रव्यं दीयत इति दानं इति व्युत्पत्तेः तस्य ग्रहणमधमर्णेन । विवादचन्द्र p. 2.

678. कुत्सितात्सीदतश्चैव निर्विशङ्कैः प्रगृह्यते । चतुर्गुणं चाष्टगुणं कुसीदाख्यमतः स्मृतम् ॥ बृहस्पति q. by व्य. म. p. 167, मदनरत्न.

678a. वृद्धिस्तु योक्ता धान्यस्य वार्धुषं तदुदाहृतम् । नारद IV. 110.

two verses: 'a vārdhuṣika (usurer) is one who taking cheap grain lends it on condition of receiving a quantity of grain of high price and is condemned among the *brahmavādins* (students of the veda). Brāhmaṇa murder and usury were weighed in a balance; the murderer of a brāhmaṇa rose to the top while the usurer trembled'. Here usury of the type of the one described in Vas. II. 41 (and not all lending of money at interest) is condemned as a great sin. Gaut. XII. 26, Vas. II. 50, Kauṭ. III. 11, Manu VIII. 140-141 and others declare it righteous (dharmyā) moneylending when an 80th part is stipulated as the interest per month.[679]

Megasthenes (fragment XXVII B p. 72) states: 'The Indians neither put out money at usury nor know how to borrow;' but he is under some misapprehension, for he again says (p. 73) 'one who is unable to recover a loan or deposit has no remedy at law. All the creditor can do is to blame himself for trusting a rogue'.

Nār. IV. 1. states that the principal topics under the title of *ṛṇādāna* are seven: what debts must be paid and what not; by whom, where and in what manner (they are to be paid); and the rules about advancing the loan and receiving it back. The first five of these relate to the debtor and the last two to the creditor. Bṛhaspati (S. B. E. 33 p. 320 v. 4) says that interest (*vṛddhi*) is described to be of four kinds by some, of five kinds by others and of six kinds by still others. Nār. (IV. 102-104) names four kinds and defines them, viz. *kāritā* (interest that is stipulated by the debtor himself), *kālikā* (interest accruing and payable every month), *kāyikā* (interest of a *paṇa* or quarter *paṇa* to be paid every day without the principal being liable to be reduced, whatever interest may have been recovered), *cakravṛddhi* (interest on interest called compound interest). Manu VIII. 153 mentions these four and commentators thereon give varying interpretations. Bṛhaspati (S. B. E. 33 p. 321 verse 6) and Vyāsa (q. by Sm. C. II. p. 154) define *kāyikā* as interest received from the body i. e. milk received from a cow pledged or the work put in by a slave or by a bull pledged. Bṛ (S. B. E. vol. 33 p. 321 verses 7-8)

679. कुसीदवृद्धिर्धर्म्या विंशतिः पञ्चमाषिकी मासम् । गौ. XII. 26; सपादपणा धर्म्या मासवृद्धिः पणशतस्य । कौटिल्य III. 11.

adds two more varieties viz. *śikhāvṛddhi*[680] (hair-like interest i. e. interest payable every day and so growing every day, just as the top-knot on one's head grows every day) and *bhogalābha* (profit by enjoyment i. e. making use of a house or taking the produce of a field in lieu of interest in the case of a mortgage). Gaut. (XII. 31–32) mentions the six, but instead of *bhogalābha* he uses the word '*ādhibhoga*', which is defined by Kāt. (501) as a transaction in which the complete enjoyment of the thing pledged or mortgaged is to be the interest. Kāt. (498–500) defines kāritā, śikhāvṛddhi and bhogalābha.

Bṛ. (S. B. E. 33 p. 319 verse 1) states[681] that the creditor should always advance a loan after taking an adequate pledge or a deposit (with a mutual friend) or a reliable surety and after committing the transaction to writing or making the loan in the presence of witnesses. The interest may be either stipulated (*kṛta*) at the time of the loan or not stipulated (*akṛta*), as indicated in Viṣṇu VI. 4. Yāj. II. 38 and Viṣṇu Dh. S. VI. 3 state the general rule that debtors of all castes may pay to creditors of all castes the interest settled by mutual agreement and the rate of interest stipulated may be with reference to an

680. वृद्धिश्चतुर्विधा प्रोक्ता पञ्चधान्यैः प्रकीर्तिता । षड्विधास्मिन् समाख्याता तत्त्वतस्तां निबोधत ॥ बृह. q. by स्मृतिच. II. p. 154, व्यव. नि. p. 224 (reads षड्विधान्यैः); कायिका कर्मसंयुक्ता मासग्राह्या तु कालिका । वृद्धेर्वृद्धिश्चक्रवृद्धिः कारिता ऋणिना कृता ॥ प्रत्यहं गृह्यते या तु शिखावृद्धिस्तु सा स्मृता । गृहात्तोयः (स्तोमः v. l) शदः क्षेत्राद्भोगलाभः प्रकीर्तितः ॥ बृह० q. by अपरार्क p. 642, स्मृतिच० II. p. 154, परा मा. III. pp. 220–221 ; व्यव. नि. p. 225 ascribes these to नारद; शिखेव वर्धते नित्यं शिरश्छेदान्निवर्तते । मूले दत्ते तथैवैषा शिखावृद्धिस्ततः स्मृता ॥ कात्या. in हरदत्त on गौ. XII. 32 and मि. p. 233 ; आधिभोगस्त्वशेषो यो वृद्धिस्तु परिकल्पितः । प्रयोगो यत्र चैवं स्यादाधिभोगः स उच्यते ॥ कात्या. q. by स्मृतिच. II. p. 154, वि. र. p. 12, वि. चि. p. 4.

681. परिपूर्णं गृहीत्वाधिं बन्धं वा साधुलग्नकम् । लेख्यारूढं साक्षिमद्वा ऋणं दद्याद्धनी सदा ॥ बृह. q. by स्मृतिच. II. 135, परा. मा. III. p. 220 ; 'परिपूर्णं सवृद्धिकमूलद्रव्यपर्याप्तमित्यर्थः ।' स्मृतिच० II. p. 135. The words *ādhi* and *bandha* are treated as synonyms by the Amarakośa and by Bṛ. (S. B. E. vol. 33 p. 323 verse 17) himself. The difference made by some between the two is this: *ādhi* is a pledge or mortgage of a chattel or immovable property to the creditor himself (with possession or without), while *bandha* consists in placing in the hands of a mutual friend a thing belonging to the debtor in order to inspire confidence (in the creditor). 'विवक्षितं बन्धशब्दस्यार्थमाह नारदः । निक्षेपो मित्रहस्तस्थो बन्धो विश्वासकः स्मृतः ॥ इति ।' नारद q. by व्य. म. p. 224. The व्य. म. (p. 166) defines bandha as an undertaking by the debtor that he would not alienate by sale, gift or mortgage the house, land or other property of his until the debt due to the creditor is paid off. This is clearly an hypothecation without possession; यावत्तावकमृणं न शोध्यते तावदेतद्गृहक्षेत्रादिकं नाविक्रयाधिकरणादिकं न करिष्यामीति निर्बन्धो बन्धः । विश्वासहेतुर्मित्रहस्तस्थो निक्षेपो बन्ध इत्यर्थः । मदनरत्न (व्यव. ms).

article pledged or with reference to a surety given or with reference to a debt totally unsecured. Though this was the general rule, Manu VIII. 153 and Bṛ. condemn taking even agreed interest if it exceeds the rates (to be specified below)[682] allowed by the smṛtis or taking the agreed heavy interest for more than a year or taking compound interest or more than double the principal or the capitalization of interest. The smṛtis lay down various rates of interest from different points of view. Gaut. XII. 26, Yāj. II. 37, Baud. Dh. S. I. 5. 90–91, Manu VIII, 140 (=Nār. IV. 99), Bṛ. (S. B. E. vol. 33 p. 320 v. 3), Vṛddha-Hārīta VII. 235 and others state the rule first laid down by Vasiṣṭha that it is just and proper to take every month $\frac{1}{80}$th part of the principal lent, so that the principal is doubled in six years and eight months,[683] and Vṛddha-Hārīta adds

682. भोगो यद्द्विगुणादूर्ध्वं चक्रवृद्धिश्च गृह्यते । मूलं च सोदयं पश्चात्तद्वार्धुष्यं सुगर्हितम् । बृह० quoted by वि. चि. p. 6 which says द्विगुणाधिकवृद्धिग्रहणं वृद्धेर्वृद्धिग्रहणं वृद्ध्या सह मूलमेकीकृत्य मूलत्वेनैव तद्ग्रहणं एतत्त्रयं निन्दितमिति गृहस्थरत्नाकरः. Vide p. 445 of गृह. र. This verse occurs in वि. र. p. 14 which says that such actions are condemned, but if a Shylock insists on his agreement he can and does recover compound interest and so on: 'तद्वार्धुष्यं विगर्हितम्, अधर्माय तज्जाति न तु भोगाधिकं तत्र लभते एव तल्लाभस्य तैस्तैर्वाक्यैर्बोधनात्'. This shows that the ancient sages were quite alive to the hardships of debtors and the evils of usurious interest. They condemned usury as a greater sin than even the murder of a learned brāhmaṇa. Vide Baud. Dh. S. I. 5. 93 and Vas. II. 40–42 quoted above on pp. 417–418.

683. कुसीदवृद्धिर्धर्म्या विंशतिः पञ्चमाषिकी मासम् । गौ. XII. 26; पञ्चमाषस्तु विंशत्या एवं धर्मो न हीयते । वसिष्ठ II. 50; वैश्यः कुसीदमुपजीवेत् । पञ्चविंशतिस्त्वेव पञ्चमाषकी स्यात् । बौ. ध. सू. I. 5. 90–91; पुराणपञ्चविंशत्यां मासे अष्टपणा वृद्धिः । एवं षड्भिर्मासैश्चतुर्भिर्वत्सरैर्द्विपर्यागतं सन्तिष्ठते । एषा धर्मवृद्धिर्मानया धर्मोऽच्यवते । हारीत q. by गृह. र. p. 447, which explains: पुराणमिह षोडशपणाः पणं काकिणीचतुष्टयम् ।. Should we not read एवं साद्विमासकैः in the quotation from Hārīta? Gaut. and Vas. provide that five māṣas were the interest on 20 *paṇas* per month and if we are to suppose that they accepted the rule that 1/80 of the principal sum was the proper rate of interest (as ascribed to Vasiṣṭha by Manu VIII. 140, Nār. IV. 99 and others), then the paṇa, acc. to those two, must be equal to 20 māṣas (i. e. 100 *raktikās*); while acc. to Baud. the paṇa would be equal to 16 māṣas. When Hārīta says that 8 paṇas are the monthly interest on 25 *purāṇas* (which were silver coins and each of which weighed 32 *raktikās*) and that in 4 years and 2 months the interest on 25 purāṇas at 8 paṇas per month came to be as much as the principal, it follows that a raktikā of silver was 40 times as valuable as a raktikā of copper ($8 \times 80 \times 50 = 32000$ divided by 800). But this does not agree with what Śukra states (note 162 above). Probably the relative values of gold, silver and copper varied from age to age, according to the supply of some or all of these metals from foreign countries.

that double the interest stated above may be taken when there is nothing pledged to secure the debt. Yāj. and Vyāsa provide that this rate is the proper one when some thing is pledged or mortgaged by way of security. Yāj. II. 37, Manu VIII. 142 (=Nār. IV. 100), Viṣṇu Dh. S. VI. 2 provide an option that two, three, four or five per cent per month may be charged as interest in the order of the *varṇas*[684] (i. e. 2 per cent per month for a brāhmaṇa debtor and so on). Yāj. II. 37 allows these rates only if there is nothing pledged by way of security. Vyāsa[685] (in Par. M. III. p. 221) provided that the monthly rate of interest was $\frac{1}{80}$th of the principal lent when a pledge or mortgage was given as against the loan, $\frac{1}{60}$th when only a surety was offered and two per cent per month when money was lent on personal security. The Anuśāsanaparva 117.20 condemns to Hell those who take exorbitant interest. Kauṭ. prescribed (as stated in n. 688) fines for taking heavier interest than that allowed by him. Kāt. (498) provides that if a debtor himself stipulates a higher rate of interest than is allowed by the śāstra in times of difficulty (in order to induce the creditor to part with his money) that stipulated interest must be paid but a rate of interest imposed by the creditor otherwise (by force &c.) should not be enforced by the Court.[686] It is probable that these rates are specified because of the economic conditions of those times which proved too much even for the ancient sages or different mercantile usages about interest prevailed in different countries at different times, as expressly stated by Nār. IV. 105-106 that[687] these high rates (including eight per cent per month) had to be paid according to the law merchant in different countries. Manu VIII. 141 (=Nār. IV. 100) holds that to take two per cent per month (on unsecured debts) is not improper. In medieval times also the rate of interest was rather high e. g. interest at 25 per cent is said to have been

684. विश्वरूप on या. II. 39 quotes a sūtra of Bṛ. for raising the rate of interest according to the varṇa of the debtor (पादोपचयात्क्रमेणेतरेषाम्).

685. सबन्धे भाग आशीतः षाष्टो भागः सलग्नके। निराधारे द्विकशतं मासलाभ उदाहृतः॥ व्यास q. in परा. मा. III. p. 221, व्य. म. p. 227.

686. ऋणिकेन तु या वृद्धिरधिका संप्रकल्पिता। आपत्कालकृता नित्यं दातव्या कारिता तु सा। अन्यथा कारिता वृद्धिर्न दातव्या कथंचन। कात्या. 498 q. by स्मृतिच. II. 154, कुल्लूक on मनु. VIII. 153, वि. र. p. 10. The वि. र. explains: ऋणिकेन तु स्वकार्यतया आशीतभागाद्द्विकशतादिरूपवृद्धितोऽधिका वृद्धिर्व्यवस्थापिता सा कारिता सा च तेन देया, अन्यथा तेनाव्यवस्थापिता बलेन स्वीकारितापि न देया।

687. या देशस्थितिस्तस्या यत्रर्णमवतिष्ठते। द्विगुणं त्रिगुणं वापि तथान्यत्र चतुर्गुणम्। तथाष्टगुणमन्यस्मिन् देयं देशेऽवतिष्ठते॥ नारद IV. 105-106.

charged on a deposit of six *gadyāṇas* kept with the *mahājanas* of Śivapura (vide Yewur Ins. in E. I. XII. p. 273). Yāj. II. 38 provides that those debtors who carry on trade by traversing dense forests and those who are sea-faring traders should respectively pay 10 per cent and 20 per cent per month and the Mit. adds that these exorbitant rates are allowed because of the great danger of the loss of even the principal as the debtors may perish by ship-wreck or from the attacks of robbers and wild beasts. Manu VIII. 157 leaves the rate of interest in the case of seafaring merchants to those who are clever in these matters and who know the proper time and place. Kauṭ. (III. 11) states[688] that the prescribed (*dharmya*) rate of interest is 1¼ *paṇa* per cent per month, but in transactions (or in commercial usage) it is five paṇas per cent per month (as the highest, it appears), that those who traverse forests and those who carry on maritime trade should pay respectively ten and twenty per cent per month, that those who exceed or induce creditors to exceed these rates should be punished with the first amercement, that each of the witnesses to such usurious transactions should be punished with half of the above fine.

Other rules laid down in the smṛtis relate to the maximum that can be recovered by a creditor from a debtor at one time. All are agreed that the creditor cannot recover at one time from the debtor for principal and interest more than double of the money lent. Vide Kauṭ. (III. 11), Manu VIII. 151, Gaut. XII. 28, Yāj. II. 39, Viṣṇu Dh. VI. 11, Nār. IV. 107, Kāt. (509). This is called the rule of *dvaiguṇya*[689] in the smṛtis and of *dāmdupat* in modern times. It will be explained in detail a little below. As regards the interest in kind on articles lent there is some difference of opinion, which need not be gone into in great detail. Manu VIII. 151 and Gaut. XII. 33 state that on loans of grain, fruits, wool and beasts of burden, and products like ghee and milk had from cattle the total recoverable cannot exceed in any case five times of what is lent. Yāj. II. 39 states

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688. सपादपणा धर्म्या मासवृद्धिः पणशतस्य । पञ्चपणा व्यावहारिकी । दशपणा कान्तारकाणाम् । विंशतिपणा सामुद्राणाम् । ततः परं कर्तुः कारयितुश्च पूर्वः साहसदण्डः । श्रोतॄणामेकैकं प्रत्यर्धदण्डः । अर्थशास्त्र III. 11.

689. चिरस्थाने द्वैगुण्यं प्रयोगस्य । गौ. XII. 28; हिरण्यस्य परा वृद्धिर्द्विगुणा । विष्णु. VI. 11 ; चिरप्रवासः संस्तम्भप्रविष्टो वा मूल्यद्विगुणं दद्यात् । कौटिलीय III. 11 ; कुसीदवृद्धिर्द्वैगुण्यं नात्येति सकृदाहृता । मनु VIII. 151. There is another reading सकृदाहिता.

that in the case of cattle and female slaves when loaned their progeny is the profit, in the case of liquids (like oil and ghee) when loaned the maximum recoverable is eightfold and in the case of clothes and grain it is respectively four and three times. Vas. II. 44-47 says the maximum recoverable at one time in the case of grain, flowers, roots, fruits and fluids (like oil) is three-fold and eight-fold in the case of things that can be weighed. Vide Viṣṇu Dh. S. VI. 12-15. Viṣṇu VI 17 (*anuktānām dviguṇā*) provides that where no special rule is laid down the maximum recoverable is to be only double of what is lent. Kāt. (570-572) states[690] that the maximum recoverable in the case of precious stones, pearls, corals, gold, silver, fruits, silk, wool is double of what is loaned; of oils, liquors, ghee, raw-sugar and salt and land eight-fold, of baser metals five-fold. Vide Bṛ. (S. B. E. vol. 33 p. 322 verses 13-16) and V. Nirnaya p. 229 (quoting Bharadvāja) for similar provisions.

The rule of what is called *dāmdupat* in modern times expressed laconically by Manu VIII. 151 and Gaut. XII. 28 is this that 'the amount of principal and interest recoverable at one time in a lump sum cannot be more than double of the money lent'. As a debt was recoverable not only from a man himself but also from his three descendants and as therefore there was practically no period of limitation for bringing a suit for money lent, creditors had great temptations to allow interest to go on increasing. Therefore the sages who condemned the profession of usury and particularly waiting long for the increase of interest[691] laid down that whatever the length of time during which the principal was at interest and whatever the rate of interest might have been, the creditor could recover by suit in a lump sum only double of the money lent. This acted as a great

690. मणिमुक्ताप्रवालानां सुवर्णरजतस्य च । तिष्ठति द्विगुणा वृद्धिः फलकीटाविकस्य च । तैलानां चैव सर्वेषां मद्यानामथ सर्पिषाम् । वृद्धिरष्टगुणा ज्ञेया गुडस्य लवणस्य च ॥ कुप्यं पञ्चगुणं भूमिस्तथैवाष्टगुणा मता । कात्या. q. in स. वि. pp. 228-230, वि. र. pp. 17, 19 (first two), व्य. म. p. 170. The वि. र. p. 17 accounts for this divergence as follows : 'बृहस्पतिना धान्ये चतुर्गुणत्वमुक्तं विष्णुमरीचिवसिष्ठहारीतैश्च त्रिगुणत्वमुक्तं तदधमर्णापकृष्टगुणत्वमध्यगुणत्वोत्कृष्टगुणैर्व्यवस्था। महार्घसमानार्घधान्यके कालदेशभेदेन वा व्यवस्था ।'.

691. एवं च वृद्धिपरिगणनं वृद्धिशुक्ले अधर्माधिक्यप्रतिपादनार्थम्, अतिपीडाकरत्वात् । अधर्मस्तु कलाग्रहणमात्र एव चिरात् वार्धुषिकस्यानामिति निन्दनात् । चिरस्थापने विशेषाभिधानाच्च । विवादचन्द्र p. 2.

check on the creditors' rapacity. Several propositions are laid down in the Mit.,[692] the Vyavahāramayūkha and other digests that graft exceptions on the general rule, and that flow from the interpretation of Manu VIII. 151 in both readings. The first modification is that if interest is received every day, month or year and is not claimed in a lump sum at one time then the total interest received by a creditor may be even several times more than the principal lent. Bṛ. provides (S. B. E. vol. 33 p. 321 verse 11) that every day interest or bodily interest and *bhogalābha* may be taken by the creditor (irrespective of the question of *dvaiguṇya*) as long as the principal is not paid[693]. (2) Further, if after the interest has accumulated for some time, there is a fresh agreement with the same debtor whereby the sum lent together with interest due is taken as the principal and interest is agreed to be paid on the amount so arrived at, then the total recoverable after this fresh agreement may exceed double the original sum lent. Manu (VIII. 154–155) and Br. (S. B. E. vol. 33 p. 331 verse 60) allow such a fresh agreement. But if the debtor does not make a fresh agreement then the rule of *dāmdupat* would apply. (3) If after the sum due to the creditor has become double of the principal lent, the creditor accepts another man as the debtor (who takes the liability on himself), then the creditor may recover from the substituted debtor after the lapse of years an amount which may be more than double of the sum originally lent. (4) If the debtor pays a part of the principal or if the creditor makes a concession (called '*reka*' in the Mit. on Yāj. II. 39) and reduces the total recoverable or if the debtor receives an additional amount of money (called '*seka*' in the Mit.) and it is added to the original amount borrowed and a fresh agreement is made between the parties to put the whole to interest, then the rule of dāmdupat would not apply.

692. एतच्च सकृत्प्रयोगे सकृदाहरणे च वेदितव्यम्। पुरुषान्तरसंक्रमणेन प्रयोगान्तरकरणे तस्मिन्नेव वा पुरुषे अनेकशः प्रयोगान्तरकरणे सुवर्णादिकं द्वैगुण्यमप्यतिक्रम्य पूर्ववद्वर्धते। सकृत्प्रयोगेऽपि प्रतिदिनं प्रतिमासं प्रतिसंवत्सरं वा वृद्ध्याहरणेऽधमर्णाद् द्वैगुण्यसंभवात्पूर्वाहृतवृद्ध्या सह द्वैगुण्यमतिक्रम्य वर्धत एव। मिता. on या. II. 39.

693. शिखावृद्धिं कायिकां च भोगलाभं तथैव च। धनी तावत्समादद्याद्यावन्मूलं न शोधयेत्॥ बृह. q. by स्मृतिच॰ II. p. 161, परा. मा. III. p. 230, विवादचन्द्र p. 2.

The rule of *dāmdupat* has been acted upon by the courts in India in modern times[694]. Though under the Transfer of property Act before its amendment in 1929 there was a conflict of decisions, since 1929 it is settled that the rule of dāmdupat does not apply to mortgages governed by the Transfer of Property Act. But the rule is so reasonable and humane that the Deccan Agriculturists' Relief Act (XVII of 1879) has made (by sec. 13) the rule of dāmdupat applicable to all agriculturists as defined by the Act, whether Hindus or non-Hindus; and the Bombay Agricultural Debtors Relief Act (of 1939), sec. 42, the Madras Debt Conciliation Act (XI of 1936, sec. 16) do the same.

A loan has to be returned on demand if no time is fixed for repayment or on the expiry of the time (if one has been fixed by the parties) or when interest ceases on account of becoming equal to the principal (Bṛ. in S. B. E. vol. 33 p. 328 verse 47) Interest stops when on the debtor offering to pay the loan the creditor refuses to accept it and the debtor deposits the money in the hands of a third person (Gaut. XII. 30, Yāj. II. 44). With Yāj. II. 44 section 84 of the Transfer of Property Act (IV. of 1882) may be compared. Vas. II. 49 states the remarkable rule that interest stops the moment the king dies and begins to run only after the coronation of the successor.[695] Nār. II. 39

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694. Vide *Balkrishna* v. *Gopal* I. L. R. 1 Bom. 73 (where it was held that the rule of dāmdupat should not be extended to apply to the amount recoverable in execution of the decree of a civil court), *Nanchand* v. *Bapusaheb* I. L. R. 3 Bom. 131 (held that the rule of dāmdupat does not apply when the defendant is a non-Hindu), *Gopal* v. *Gangaram* I. L. R. 20 Bom. 721 F. B. (the rule is excluded from mortgages the terms of which necessitate the existence of an account between the mortgagor and the mortgagee in possession about the rents and profits), *Sundarabai* v. *Jayawant* 1 Bom. L.R. 551, 555 (rule applies between all Hindu debtors and creditors both in respect of simple as well as mortgage debts), *Khimji* v. *Chunilal* 21 Bom. L. R. 419 (by agreement interest which does not exceed the principal may be capitalized). It is interesting to find that in ancient Egypt the legal maximum rate of interest was thirty per cent and it was forbidden to allow interest to increase beyond the double of the principal. Vide Wilkinson's 'Manners and Customs of the ancient Egyptians' (First Series), 1842, vol. II p. 50. Usury was condemned in ancient Egypt, among the Jews (vide Psalm XV. 5, Ezek. XVIII. 8 and 17, Lev. XXV. 36-37) and by the ancient smṛtis (as more heinous than even the murder of a brāhmaṇa, H. of Dh. vol. II. p. 124 n. 269).

695. राजा तु मृतभावेन द्रव्यवृद्धिं विनाशयेत् । पुना राजाभिषेकेण द्रव्यमूलं च वर्धते ॥ वसिष्ठ II. 49.

(S. B. E. vol. 33 p. 33) provides that no interest runs on the price of commodities, on wages, on a deposit, on a fine, on what has been idly promised (to bards and the like) and on the stake won in gambling, unless there is a special or express agreement to pay interest.[696] Kāt. (508) has a similar verse,[697] but adds hides, crops, liquor, bride-price and suretyship debts to some of those mentioned by Nār. Kauṭ. (III. 11) provides that no interest runs where the debtor is a person engaged in a Vedic sacrifice of long duration, or is suffering from a disease or is staying at his teacher's house (*gurukula*) for study or is a minor or is a man without any substance. As regards some cases where originally a thing is lent to a person out of friendship or because he asked a loan of it, Nār. (IV. 108) and Kāt. (502–505) lay down certain rules which are quoted in the Mit. (on Yāj. II. 38) and other works. Nār. (IV. 108) prescribes[698] that no interest ever attaches to things loaned through friendship, unless there is an express stipulation to that effect; but even in the absence of a stipulation interest starts running after the expiry of six months. Nār. IV. 109 and Kāt. (505) both lay down that a loan (of money or an article) made through friendship cannot begin to earn interest as long as no demand is made for its return. If the debtor refuses to return it after it is demanded interest begins to run at the rate of five per cent. Kāt. (502–504)[699] lays down three propositions about *yācitaka* (a temporary loan of money or of an article) : (1) When a person takes such a loan and goes to another country without

696. पण्यमूल्यं भृतिर्न्यासो दण्डो यश्चावहारकम् । वृथादानाक्षिकपणा वर्धन्ते नाविवक्षिताः ॥ नारद II. 36; मिता. on या. II. 38, परा. मा. III. p. 224, व्य. म. p. 169 read दण्डो यश्च प्रकल्पितः; वि. चिं. p. 7 reads यश्चाभिहारिकम् (what is appropriated by fraud or force), अवहारकम् is translated by Jolly as 'what is abandoned by one and found by another' (S. B. E. 33 p. 33).

697. चर्मसस्यासवद्यूते पण्यमूल्ये च सर्वदा । स्त्रीशुल्केषु न वृद्धिः स्यात्प्रातिभाव्यागतेषु च ॥ कात्या. (508) q. by स्मृतिच. II. p. 157, परा. मा. III. p. 225, वि. र. p. 20; दीर्घसत्रव्याधिगुरुकुलोपरुद्धं बालमसारं वा नर्णमनुवर्धेत । कौ. III. 11.

698. न वृद्धिः प्रीतिदत्तानां स्यादनाकारिता क्वचित् । अनाकारितमप्यूर्ध्वं वत्सरार्धाद्विवर्धते ॥ नारद IV. 108, which स्मृतिच० II. p. 156 explains 'अनाकारिता अकृता' प्रीतिदत्तानां प्रतियाचनप्रतिदानदिननिर्देशशून्यानामिति शेषः ।'. प्रीतिदत्तं तु यत्किञ्चिद्वर्धते न त्वयाचितम् । याच्यमानमदत्तं चेद्वर्धते पञ्चकं शतम् ॥ नारद IV. 109.

699. यो याचितकमादाय तमदत्त्वा दिशं व्रजेत् । ऊर्ध्वं संवत्सरात्तस्य तद्धनं वृद्धिमाप्नुयात् ॥ कृत्वोद्धारमदत्त्वा यो याचितस्तु दिशं व्रजेत् । ऊर्ध्वं मासत्रयात्तस्य तद्धनं वृद्धिमाप्नुयात् ॥ स्वदेशेऽपि स्थितो यस्तु न दद्याद्याचितः क्वचित् । तं ततोऽकारितां वृद्धिमनिच्छन्तं च दापयेत् ॥ कात्या. (502–504) q. by मिता. on या. II. 38, वि. र. pp. 15–16, स्मृतिच. II. p. 156.

returning it, that loan begins to acquire interest after a year from the date of the loan (though no demand be made); (2) if a person after taking a loan goes to another[700] country without returning it even when pressed by the lender to return it that loan begins to acquire interest three months (after demand); (3) when the borrower of a thing does not return it even though he is pressed to return it, the king should make him pay interest from that day (i. e. day of demand), though it was not agreed upon, though he remained in the country and though he be unwilling to pay interest. The Madanaratna says that in these cases where no interest is settled beforehand and where the texts do not specify the rate (as Kāt. 505–506 do viz. what is lent through friendship, a deposit, balance of interest, unpaid purchase money, if not returned on demand, begin to carry interest at five per cent per month), the rate of interest would be the one stated by Yāj. II. 37 (viz. 1/80th per month) and Viṣṇu VI. 4. (*akṛtāmapi vatsarātikrameṇa yathāvihitām*).

Ādhi[701] means pledge of a movable or mortgage of immovable property. Nār. IV. 117 remarks[702] that in lending money an *ādhi* and surety are the two sources that inspire confidence (in the creditor that his money will be safe) and a document and witnesses are the two modes of proof that will establish (the existence of a debt). An *ādhi* is so called because the creditor is authorised to wield power over it or it is placed within his power (Nār. IV. 124 and Mit. on Yāj. II. 58)[703]. The

700. Compare Viṣṇu Dh. S. VI. 4 with the first proposition. Pāṇini (IV. 4. 21) derives *yācitaka* (in the sense 'yācitena nirvṛttam'). In *Saundanappa* v. *Shivbasawa* 31 Bom. 354 Mr. Justice Chandavarkar translates (at p. 361) Nār. IV. 108 and Kāt. (502–504), discusses the explanations of those passages by the Mit. on Yāj. II. 38 and holds that these incidents are even now applicable to contracts of debts by Hindu debtors and that neither the Interest Act (XXXII of 1839) nor the Indian Contract Act affects the ancient Hindu Law. It should be noted that 31 Mad. 250 and 53 Mad. 549 at p. 579 dissent from this view.

701. For an illuminating discussion on pledges, vide Dr. Sen's 'Hindu Jurisprudence' chap. VI. pp. 176–206.

702. विश्रम्भहेतू द्वावत्र प्रतिभूराधिरेव च । लिखितं साक्षिणश्च द्वे प्रमाणे व्यक्तिकारके ॥ नारद IV. 117.

703. आधिर्नाम गृहीतस्य द्रव्यस्योपरि विश्वासार्थमधमर्णेनोत्तमर्णेऽधिक्रियते आधीयत इत्याधिः । यथाह नारदः—आधिक्रियत इत्याधिः—इति । मिता. on या. II. 58.

word ādhi occurs in Āp. Dh. S. I. 6. 18. 20[704] (which includes among those who are unfit to be invited at a śrāddha 'one who subsists on ādhi'). Gaut. XII. 29 also refers to *ādhi*. Kauṭ. (III. 12) briefly deals with *ādhi* and after stating some rules extends the principles of *upanidhi* (deposit) and debt to it. Manu VIII. 165 employs the word 'ādhamana' in the sense of 'mortgage'. According to Bṛ.[705] (S. B. E. vol. 33 p. 323 verse 17) an ādhi is of four kinds viz. of movable property, of immovable property, *gopya* (to be kept in custody of the pledgee only), *bhogya* (to be enjoyed). Nār. IV. 124 first divides ādhi into two sorts, viz. one that is to be redeemed within a certain time fixed (by agreement at the time of contracting the debt) or to be retained till the debt is paid off and Nār. IV. 125 again subdivides each of these two into *gopya* and *bhogya*. This latter division was known to Gaut. XII. 32 .Manu VIII. 143, Yāj. II. 59, Kāt. (576). The subdivisions of ādhi are made from several points of view viz. the nature of the property, the form of the pledge, the mention or non-mention of a period and the evidence to establish it. The Mit. on Yāj. II. 58 explains[706] that the first kind of ādhi mentioned in Nār. IV. 124 contains the conditions that the money will be repaid at a fixed time and that if the money be not so paid at the time fixed the thing pledged or mortgaged will belong to the creditor. Yāj. II. 58 sets out three provisions viz. (1) when a time is fixed for payment, the thing pledged or mortgaged is lost to the debtor if the time fixed is allowed to pass without there being any repayment (whether it be an ādhi that is to be merely kept or whether it be one to be enjoyed); (2) but if no time be fixed the thing given as security is not lost

704. ये च शस्त्रमाजीवन्ति । ये चाधिम् । भिषक् । वार्धुषिकः । आप. ध. सू. I. 6.18. 19–22. हरदत्त explains आधि here 'as rent of a house,' because वार्धुषिक occurs a little later. But that sense is very rare and besides hardly any smṛtikāra has condemned the letting out of one's house for rent. It is better to take ādhi as pledge or mortgage and hold that vārdhuṣika refers only to those who lend corn in order to take 1½ times as much (or more) after the rainy season as defined by Nār. IV. 110 quoted above (on p. 417).

705. आधिर्बन्धः समाख्यातः स च प्रोक्तश्चतुर्विधः । जङ्गमः स्थावरश्चैव गोप्यो भोग्यस्तथैव च ॥ बृह. q. by व्यव. नि. p. 233, व्य. म. p. 171; अधिक्रियत इत्याधिः स विज्ञेयो द्विलक्षणः । कृतकालोपनेयश्च यावद्देयोद्यतस्तथा ॥ स पुनर्द्विविधः प्रोक्तो गोप्यो भोग्यस्तथैव च । नारद IV. 124–25.

706. कृते काले आधानकाले एवास्मिन्काले द्वीपोत्सवादौ मयायमाधिर्मोक्तव्योऽन्यथा तवैवाधिर्भविष्यतीति । एवं निरूपिते काले उपनेयः आत्मसमीपं नेतव्यो मोचनीय इत्यर्थः । देयं द्रव्यं देयमनतिक्रम्य यावद्देयमुद्यतो नियतः स्थापितः इत्यर्थः । यावद्देयमुद्यतो यावद्देयोद्यतः गृहीतधनप्रत्यर्पणावधिरनिरूपितकाल इत्यर्थः । मिता on या. II. 58.

to the debtor at all, when it is an ādhi that is to be enjoyed; (3) if no time is fixed and the ādhi is only to be kept (*gopya*) then it is lost to the debtor only if it is not redeemed even when the debt has grown to double of the principal by non-payment of the interest agreed upon. There is a period of fourteen days' grace after this, as stated by Bṛ. (S. B. E.[707] vol. 33 p. 324, verses 27–28) that when the principal has been doubled or the stipulated period in the case of a pledge delivered for a certain time only has expired, the creditor becomes the owner of the pledge, after waiting for a fortnight during which the debtor may repay the debt and redeem his property. Gaut. XII. 29, Manu VIII. 143, Yāj. II. 58, Viṣṇu Dh. S. VI. 5 provide that an ādhi which is mortgaged with the condition that the fruit or profits are to be enjoyed bears no interest nor can the creditor, even after keeping such an ādhi for a long time, make a gift of it or sell it. Medhātithi on Manu VII. 143 holds that a mortgagee with possession who is to enjoy the produce cannot, by virtue of the last quarter of Manu VIII. 143, make a sub-mortgage (called *anvādhi*). Kullūka on[708] the other hand says that it is common practice in all countries for a mortgagee to execute a sub-mortgage of land and the like and that Manu VIII. 143 does not forbid it. Prajāpati[709] (q. by Par. M. III. p. 242) defines a deed of sub-mortgage: 'if the creditor pledges to another the thing already pledged to him for the same amount (for which it was pledged to him) he should pass a fresh deed of pledge (or mortgage) and should hand over the former deed to his own creditor.' It appears that sub-mortgages came to be recognized rather late. Bharadvāja states that if a sub-mortgage be effected without the mortgagor's consent, the mortgagee would lose his money.

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707. हिरण्ये द्विगुणीभूते पूर्णे काले कृतावधेः । बन्धकस्य धनी स्वामी द्विसप्ताहं प्रतीक्ष्य च । तदन्तरा धनं दत्त्वा ऋणी बन्धमवाप्नुयात् । बृह. q. by मिता. on या. II. 58. Compare the description of mortgage by conditional sale in sec. 58 (c) of the Transfer of Property Act (of 1882).

708. अत इह निसर्गोऽन्यत्राधानं विक्रयसाहचर्यात् । सदृशौ हि तौ केनाचिदंशेन । मेधा० on मनु. VIII. 143; मेधातिथिगोविन्दराजौ तु आधेश्चिरकालेऽवस्थानेपि न निसर्गो नाम्यत्र बन्धकेनार्पणमिति व्याचक्षाते । अत्र तु सर्वदेशेऽपि शिष्टाचारविरोधः, बन्धकीकृतभूम्यादेरन्यत्राधीकरणसमाचारात् । कुल्लूक on मनु. VIII. 143.

709. धनी धनेन तेनैव परमाधिं नयेद्यदि । कृत्वा तदाधिलिखितं पूर्वं चास्य समर्पयेत् ॥ प्रजापति q. by स्मृतिच. II. 143, परा. मा. III. 242, व्य. म. p. 26; 'अयं चान्वाधिर्धनस्य द्वैगुण्ये सति संप्रतिपत्तौ तु द्वैगुण्यादूर्ध्वमपि द्रष्टव्यः' परा. मा. III. p. 242; स्वामिना चानभ्यनुज्ञात आधेराधिं करोति चेत् । स्वधनात्स तु हीनः स्यात्करोत्यापद्यि पूर्ववत् ॥ भरद्वाज in स. वि. pp. 234–235.

The general rule was that an ādhi (whether of movable or immovable property) that was *bhogya* carried no interest but the profits were to be taken in lieu of interest (vide Kāt. 516)[710] and the debtor would in this case get back his property on paying the principal. Kauṭ. (III. 12) states[711] that immovable property mortgaged may be such that it can be enjoyed only by expending labour over it or without expending one's own labour the creditor may enjoy the fruits or income thereof. But as noted by Vyāsa and Bharadvāja[712] the stipulation about a *bhogya ādhi* may be that the income from the property is to be taken as in payment of the whole interest and part of the principal. This latter is called *sapratyaya-bhogyādhi* and the other variety where the income is taken in lieu of interest only is called *apratyaya-bhogyādhi*. The Mit. on Yāj. II. 64 after citing a text of Bṛhaspati refers to these two varieties (though it does not use these terms) and adds that if the income is not sufficient to meet the interest wholly then the debtor may have to pay the principal and the unpaid part of the debt before redeeming his property. The Mit. (on Yāj. II. 64) states that the appropriate name 'kṣayādhi' is given by the people to what is called (above) as *sapratyaya-bhogyādhi*. Bharadvāja states that on taking an account (where there is an agreement to apply the income towards interest and reduction of the principal) if the creditor has been overpaid he is to restore the overpaid amount to the debtor and that if a portion of the principal remains unpaid the debtor has to repay it.

If a man first mortgaged his property and then sold it, the purchaser took it subject to the rights of the mortgagee (Vasiṣṭha quoted by Sm. C. II. p. 145). If a person executed a mortgage, a sale and a gift of the same thing on the same day, then the

710. द्रव्यं गृहीत्वा वृद्ध्यर्थं भोगयोग्यं ददाति चेत् । जङ्गमं स्थावरं वापि भोग्याधिः स तु कथ्यते ॥ मूल्यं तदखिलं दत्त्वा स्वकमाधिकमाप्नुयात् ॥ कात्या. 516 q. by व्यव. नि. p. 242, स. वि. p. 234, which says that this is अप्रत्ययभोग्याधि.

711. स्थावरस्तु प्रयासभोग्यः फलभोग्यो वा । कौटिल्य III. 12.

712. अत्र भोग्यो द्विविधः सप्रत्ययभोग्याधिः अप्रत्ययभोग्याधिश्चेति । सवृद्धिक-मूल्यापाकरणार्थो यः स सप्रत्ययभोग्याधिरित्युच्यते । वृद्धिमात्रापाकरणार्थो यः सोऽप्रत्ययभोग्याधिरित्युच्यते । तत्र सप्रत्ययभोग्याधिमाह व्यासः । कांचिद्वृद्धिं समाभाष्य द्रव्यमादाय तत्त्वतः । मत्क्षेत्रं गृहं च वृद्ध्यर्थमधिकं मूलनाशनम् । इत्याधिः प्रत्ययाधिः स्याद्वृद्धेऋणे निष्क्रयो भवेत् । ... अत्र भरद्वाजः । ... यत्तु तत्राधिकं वृद्धेर्देयं तद्धनिने पुनः । हीनं यावत्तु तद्वृद्धे तावत्सम्पूरयेद्धनी ॥ स. वि. pp. 233–234 ; vide व्यव. नि. pp. 242–243 from which S. V. appears to have borrowed.

donee would take one-third of the thing and the mortgagee and purchaser would share the remaining two-thirds in proportion to the money paid by each[713]. If a person was liable to pay several debts, some secured by a pledge or mortgage and some taken on personal security, the latter were to be paid first and redemption of the mortgage was to be ordered afterwards, according to Bharadvāja (q. by Vy. Nir. p. 245).

The restriction that more money should not be taken from the sub-mortgagee than what was advanced to the mortgagor was for the benefit of the latter. The Par. M. (III. p. 242) provides that a sub-mortgage can be made only when the amount due has risen to double the principal, but that if the owner consents a sub-mortgage may be made even before that contingency arises.

Kāt. (522) requires that an ādhi becomes valid when such particulars as the boundaries of the field or house and the village (in which it is situated) are specified[714]. Kāt. (518) further provides that a writing of pledge or sale or gift is superior to a similar transaction made in the presence of witnesses only. If the same field or other thing is mortgaged or pledged to two persons separately, Viṣṇu Dh. S. V. 185[715] and Bṛ. (S. B. E. 33 p. 326 verse 34) prescribe[716] that the one who got possession first (without force) is entitled to preference. This shows that under ancient Hindu Law possession was nine points of law and that hypothecation without delivery of possession was known to Kāt. and other smṛti writers, even if earlier smṛtis did not recognise an hypothecation without possession. Yāj. II. 60 and Nār. IV. 139 emphatically assert that a pledge or mortgage becomes perfect or effective only if there

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713. यं पूर्वतरमाधाय विक्रीणाति तु तं पुनः । किमेतयोर्बलीयः स्यात्प्राक्तनं चलनपरम् ॥ कृतं यत्रैकदिवसे दानाधमनविक्रयम् । त्रयाणामिति सन्देहे कथं तत्र विचिन्तयेत् । त्रयोपि तद्धनं धर्म्यं विभजेयुर्यथांशतः । उभौ क्रियानुसारेण त्रिभागेन प्रतिग्रहः ॥ इति । वसिष्ठ q. by स्मृतिच. II. p. 145, स. वि. p. 238–239; Bṛ quoted by both has similar verses.

714. मर्यादाचिह्नितं क्षेत्रं गृहं वापि यदा भवेत् । ग्रामादयश्च लिख्यन्ते तदा सिद्धिमवाप्नुयात् । कात्या. q. by स. वि. p. 236. Compare sections 21 and 22 of the Indian Registration Act.

715. ययोर्निक्षिप्त आधिस्तौ विवदेतां यदा नरौ । यस्य भुक्तिः फलं तस्य बलात्कारं विना कृता ॥ विष्णुधर्मसूत्र V. 185, परा. मा. III. 233 reads जयं for फलम्.

716. क्षेत्रमेकं द्वयोर्बन्धे यद्वत्तं समकालिकम् । येन भुक्तं भवेत्पूर्वं तस्य तत्सिद्धिमाप्नुयात् । बृह. q. by परा. मा. III. p. 233, स्मृतिच. II. p. 144; vide a similar verse of वसिष्ठ quoted in व्य. म. p. 173.

is enjoyment and not otherwise. This is to be taken along with Yāj. II. 23 and so the first in time shall prevail only if the first is accompanied with possession. If a sale or mortgage be made before witnesses to one man and in writing to another, the latter prevails over the former[717]. If a debtor were to pledge or mortgage the same thing to another after pledging it to one and without redeeming the first debt, Viṣṇu Dh. S. (V. 181–182) prescribed[718] the drastic measure of corporal punishment (whipping or imprisonment) if the land mortgaged was a *gocarma* or more in extent or a fine of 16 *suvarṇas* if it was less. Kāt. (517) in similar circumstances made the debtor liable to the fine imposed on a thief. Kāt. (519–521 q. in Sm. C. II. pp. 144–145 and V. P. pp. 240–241) states that in a competition between a document of pledge which does not give particulars of the thing pledged or which refers to a thing not existing at the time and a document in which the thing pledged is described with particulars or in which the thing existed at the time the deed was executed, the latter is entitled to preference; similarly the pledge of a thing specifically described is superior to a prior pledge of all the debtor's property mentioned in general terms.

If an *ādhi* deteriorates[719] in value (i. e. becomes inadequate to meet principal and interest) or if it be lost or destroyed though proper care be taken thereof by the creditor, then the debtor must either pledge another adequate thing (in substitution) or the debtor should return the amount due (Yāj. II. 60, Kāt. 524). The Mit. on Yāj. II. 60 remarks that it follows from this that it is the duty of the pledgee to take proper care of the thing pledged. Bṛ. (S. B. E. 33 p. 323 verse 19) expressly says

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717. आधानं विक्रयो दानं लेख्यसाक्ष्यकृतं यदा । एकक्रियाविरुद्धं तु लेख्यं तत्रापहारकम् ॥ कात्या. (518) q. by परा. मा. III. 235, स्मृतिच. II. p. 144, स. वि. p. 237. Compare Kāt. 518 with sec. 48 of the Registration Act which provides that a document relating to movable or immovable property shall prevail over an oral agreement or declaration unless the latter is accompanied or followed by delivery of possession.

718. गोचर्ममात्राधिकां भुवमन्यस्याधीकृतां तस्मादनिर्मोच्यान्यस्य यः प्रयच्छेत्स वध्यः । ऊनां चेत् षोडशसुवर्णान् दण्ड्यः । विष्णु. V. 181–182. गोचर्म is variously defined: सप्तहस्तेन दण्डेन त्रिंशद्दण्डा निवर्तनम् । दश तान्येव गोचर्म दत्त्वा स्वर्गे महीयते ॥ बृहस्पतिस्मृति 8 q. by मिता. on या. I. 210 and अपरार्क p. 367; विष्णु. V. 183 एकोऽश्नीयाद् यदुत्पन्नं नरः संवत्सरं फलम् । गोचर्ममात्रा सा क्षोणी स्तोका वा यदि वा बहुः ॥ Vide also पराशर XII. 49, वृद्धगौतम p. 539, अपरार्क p. 1225 for other definitions.

719. आधीकृतं तु यत्किंचिद्विनष्टं दैवराजतः । तत्रर्णं सोदयं दाप्यो धनिनामधमर्णिकः ॥ न चेद्धनिकदोषेण निपतेद्वा म्रियेत वा । आधिमन्यं स दाप्यः स्याद्धनान्मुच्येत नर्णिकः ॥ कात्या 523, 524 q. by स्मृतिच॰ II. pp. 137, 138, वि. र. p. 26–27.

that the pledge has to be kept carefully like a deposit, as otherwise interest is forfeited in case of its being damaged. If a pledge which is to be kept only is enjoyed by the creditor, then the interest stops and if it deteriorates or is lost the creditor has to restore it to its former condition or substitute another of equal value; if a pledge to be enjoyed is lost or deteriorates by use then also the interest stops; and the creditor has to restore it, otherwise he will lose his principal (Yāj. II. 59 and the Mit. thereon, Nār. IV. 125, 127). If a pledge is lost without any fault or negligence of the creditor, but through fate (i. e. accidents like fire or flood) or the action of the king, the debtor has to furnish another pledge or to pay the amount due (Kāt. 523, Nār. IV. 126, 130, Yāj. II. 59, Viṣṇu Dh. S. VI. 6, Gaut. XII. 39, Bṛ., S. B. E. 33 p. 323 verse 21). From the time of Gautama[720] (about 500 B. C.) onwards the rule about the care required of a pledgee, bailee, depositee was the same viz. that he is to take of another's property kept with him as much care as he would take of his own. Nār. (*nikṣepa* 14) and Yāj. II. 67 lay down the same rule for all kinds of bailments. Manu VIII. 189 (=Nār., *nikṣepa*, verse 12) illustrates what is meant by accidental loss.

The debtor cannot redeem the pledge or mortgage before the time fixed by mutual agreement, but by mutual agreement he can redeem even before (Bṛ. S. B. E. p. 325 verses 32–33). If the creditor does not allow redemption when the debtor has a right to redeem and is ready to do so, the creditor may be liable to be fined as a thief (Yāj. II. 62). Acc. to Kauṭ. (III. 12) the fine is 12 paṇas[721].

It has already been stated above (p.429) that in certain cases (i.e. when it is a *gopya ādhi*) the ownership is lost to the mortgagor (i. e. in the language of modern law there is a foreclosure), if the amount has risen to double of the money lent without payment (even after the period of grace) or if the period fixed has passed away without there being repayment (whether the

720. निध्यन्वाधियाचितावक्रीताधयो नष्टाः सर्वाननिन्दितान्पुरुषापराधेन । गौ. XII. 39, on which हरदत्त says: पुरुषापराधस्तु यदि धारयितारः स्वद्रव्यवन्न रक्षयेयुः, यथाग्निभयादौ स्वद्रव्यं गृहीत्वा निध्याद्युपेक्षेरन् स्वद्रव्यं वा गुप्तं निधाय बहिर्निध्यादि स्थापयेयुः। एतस्मिन्पुरुषापराधे सति दद्युरेव।"; दैवराजोपघातेन यदि तन्नाशमाप्नुयात्। ग्रहीतुर्द्रव्यसहितं तत्र दोषो न विद्यते॥ बृह. q by स्मृतिच. II. p. 179, व्य. म. p. 192; अराजदैविकेनापि निक्षिप्तं यत्र नाशितम्। ग्रहीतुः सह भाण्डेन दातुर्नष्टं तदुच्यते। कात्या. q. by स्मृतिच. II. p. 179. Compare sections 151 and 152 of the Indian Contract Act, where the same propositions about the care to be taken by the bailee are laid down.

721. उपस्थितस्याधिमप्रयच्छतो द्वादशपणो दण्डः। अर्थशास्त्र III. 12.

amount has risen to double of that lent or not, acc. to Mit. on Yāj. II. 58). But if at the time of contracting the debt the stipulation is to repay the sum lent with interest and there is no stipulation about loss of the ownership of the thing mortgaged (i. e. it is like a simple mortgage of modern times), then there is no loss of ownership. There is then only a power of sale in the mortgagee. So also in the case of a *bhogyādhi* the mortgagor or his heirs can redeem the property at any time by paying the principal and there is no loss of ownership to the mortgagor. According to Yāj. II. 63 and Br.[722] (S. B. E. vol. 33 p. 325 verse 29) the creditor can sell in the presence of (the debtor's relatives) and witnesses the ādhi, when the amount has grown to double of that lent or when the period fixed has passed, if the debtor has not redeemed and is absent or dead. After meeting his own dues the creditor has, as said by Kāt. 529, to hand over the balance of the sale price to the king (i. e. probably to the court of the locality). Kauṭ.[723] (III. 12) provides that if the debtor is present and the creditor is afraid of the loss of his money because it may exceed the market value of the ādhi he may sell it with the permission of the judges (*dharmastha*) or he may demand a surety for assurance. It appears from these passages that a sale through court and a right of private sale were both recognised in the case of mortgages in ancient India (as in modern times under sections 65 and 69 of the Transfer of Property Act).

There were two other special kinds of ādhi described in Yāj. II. 61 viz. *caritrabandhaka*[724] and *satyaṅkāra*. The first

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722. हिरण्ये द्विगुणीभूते मृते नष्टेऽधमर्णिके । द्रव्यं तदीयं संगृह्य विक्रीणीत ससाक्षिकम् ॥ बृह. q. by व्य. म. p. 174, परा. मा. III. p. 240 which remarks 'आधीकृतं द्रव्यं ससाक्षिकं विक्रीय ऋणानुरूपं द्विगुणीभूतद्रव्यपर्याप्तं गृहीतं ततोऽवशिष्टं वर्जयेत् । राज्ञे समर्पयेदित्यर्थः ; विना धारणकाद्वापि विक्रीणीत ससाक्षिकम् । या. II. 63 ; धारणकादधमर्णाद्विना । मिता.

723. धारणकसंनिधाने वा विनाशभयादुद्गतार्घं धर्मस्थानुज्ञातो विक्रीणीत । आधिपालप्रत्ययेन वा । अर्थशास्त्र III. 12. Acc. to the Sm. C. II. 150 ādhipāla was a surety in case of *gopyādhi* (quoting पितामह) ; राज्ञस्ततः स विख्यातो विक्रेय इति धारणा । सवृद्धिकं गृहीत्वार्थं शेषं राजन्यथार्पयेत् ॥ कात्या. q. by अपरार्क p. 658, परा. मा. III. p. 241, स. वि. p. 245, विवादचन्द्र p. 9 ; यदा तु न सकुल्याः स्युर्न च सम्बन्धिबान्धवाः । तदा दद्याद् द्विजातिभ्यस्तेष्वसत्स्वप्सु निक्षिपेत् ॥ नारद IV. 113 ; तथा च संग्रहकारः ।... सुतादिब्राह्मणान्तानां रिक्थभाजामसंभवे । पलाशस्य पलाशेन जुहुयान्मध्यमेन तु । यत्कुसीदमिति प्रास्येदथवाप्स्वेव तज्जलम् ॥ स्मृतिच. II. p. 177.

724. चरित्रबन्धककृतं सवृद्ध्या दापयेद्धनम् । सत्यङ्कारकृतं द्रव्यं द्विगुणं प्रतिपादयेत् ॥ या. II. 61 ; on सत्यंकारकृत the मिता. says: सत्यस्य कारः सत्यंकारः—कारे सत्यागदस्य इति मुम् । सत्यंकारेण कृतं सत्यंकारकृतम्. Two meanings are given of चरित्रबन्धककृत and सत्यंकारकृत. 'कारे सत्यागदस्य' is पाणिनि VI. 3. 70.

occurs either when the creditor being known to be very honest the debtor gives as security a property of very great value for a small debt or where a debtor being known to be very honest a property of very small value is accepted as security for a large debt. In such a case there is no forfeiture or foreclosure of the property in any case but the king (or judge) should award only double the principal lent. Another meaning is that in a *caritrabandhaka* it is the merit (*apūrva* or *puṇya*) arising from bathing in the Ganges or from performance of *agnihotra* that is given as security (i. e. he will forfeit merit on non-payment). In this case the creditor will receive double and there is no loss or forfeiture of ādhi. A pledge made with *satyaṅkāra* occurs when at the time of making a pledge the stipulation is 'I am liable to pay only double but there will be no loss of the thing pledged' or (a second meaning of) satyaṅkāra is that 'when an earnest (a ring or the like) is given at the time of a sale and the vendor breaks the promise he has to pay double of the earnest'.

If the mortgagee is dead or absent abroad, and the debtor wants to redeem he may take back the ādhi after paying the amount due to the family i. e. to his sons and other agnatic relations or to his cognates and in the absence of these (if the creditor be a brāhmaṇa) to other brāhmaṇas (and if no brāhmaṇas be available) he may cast the money into water (Yāj. II. 62 and Nār. IV. 112-113). The Kauśika-sūtra[725] (46. 36-40) contains provisions about casting the debt in the cemetery or where four roads meet if the creditor is dead and there are no heirs. The Saṅgraha says that it may be thrown into water with a palāśa leaf to the accompaniment of Tai. S. III. 3. 4. 1-2 quoted above (n. 671). Another alternative is that the debtor may have a valuation of the ādhi made at the time when he wants to redeem (and the creditor is absent), and allow it to remain with the creditor but without interest (and redeem it at the valuation when the creditor comes or secure the price from the creditor if the ādhi be afterwards lost or destroyed, acc. to Mit. on Yāj. II. 63).

Pratibhū. A *pratibhū* or *lagnaka* (Bṛ. quoted in n. 681 and Kāt. 530) means 'surety'. *Prātibhāvya* (being a surety) was known to Gautama (XII. 38) and *pratibhū* was known to Pāṇini

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725. उत्तमर्णे मृते तदपत्याय प्रयच्छति। सगोत्राय। श्मशाने निवपति। चतुष्पथे च। कक्षान्नादीपयति। कौशिकसूत्र 46. 36-40.

(II. 3. 39). Suretyship requires the concurrence of three persons viz. the creditor, the borrower (called the principal debtor) and the person who agrees, for inspiring confidence in the creditor[726], to pay or indemnify if the principal debtor commits default. Manu VIII. 160 speaks of surety for appearance and for repayment of debt. According to the purpose of the transaction a surety is of three kinds (Yāj. II. 53 = Viṣṇu Dh. S. VI. 41 and Nār. IV. 118) viz. for appearance, for payment and for honesty. The first undertakes to produce a person before a court and assures the court that the person concerned will not abscond from the country; the surety for payment agrees that in case the debtor does not pay the principal and interest, he will himself pay both; the surety for honesty assures the employer or other person with whom another man deals that the latter is an honest and good man, that he would not deceive and that reliance may be placed on him (vide Mit. on Yāj. II. 53 and Smṛ. C. II. p. 148 for these explanations). Bṛ. (S. B. E.[727] vol. 33 p. 327 verses 39-40) speaks of four (including the three of Yāj. II. 53), his fourth being one who promises to deliver or restore the assets that are with the debtor (such as household furniture or ornaments). Yāj. and Nār. must be deemed to include this last under the surety for payment. Kāt. (530)[728] says that a surety (*lagnaka*) may be caused to be given for repayment (of a debt), for appearance (*upasthāna*), in lawsuits, for honesty and for taking oaths (or ordeals). Acc. to Hārīta a surety is taken for five purposes viz. for keeping the peace (*abhaya*),

726. प्रातिभाव्यं नाम विश्वासार्थं पुरुषान्तरेण सह समयः । मिता. on या. II. 53, व्य. प्र. p. 247.

727. दर्शने प्रत्यये दाने ऋणिद्रव्यार्पणे तथा । चतुष्प्रकारः प्रतिभूः शास्त्रे दृष्टो मनीषिभिः ॥ आहैको दर्शयामीति साधुरित्यपरोऽब्रवीत् । दाताहमेतद्द्रविणमर्पयामीति चापरः ॥ बृह. q. by अपरार्क p. 655, स्मृतिच. II. p. 148 and व्य. प्र. p. 247.

728. दानोपस्थानविश्वासविवादशपथाय च । लग्नकं दापयेदेव यथायोगं विपर्यये ॥ कात्या. 530 q. by अपरार्क p. 655, परा. मा. III. 249, स. वि. p. 247. When a special oath or ordeal was to be taken or undergone at some future date, a surety was taken from the party. A surety was also to be taken from both parties to a litigation (Yāj. II. 10). अभये प्रत्यये दाने उपस्थाने प्रदर्शने । पञ्चस्वेव प्रकारेषु ग्राह्यो हि प्रतिभूर्बुधैः ॥ हारीत q. by स्मृतिच. II. 148 and व्य. प्र. p. 248: 'उपस्थानमत्र बन्धद्रव्यार्पणमभिमतं न दर्शनम्, तस्य स्वपदेनैवोपात्तत्वात्, पञ्चत्वित्यस्याघटनाच्च । स्मृतिच. All the above kinds of sureties are taken in modern civil and criminal proceedings. Vide see 145 of the Civil Pro. Code (for sureties for the performance of a decretal order or repayment of money ordered by a Court to be paid, for restitution of property taken in execution), sec. 55 (4), Order 25 rule 1, Order 38 r. 5, Order 41 rules 6 and 10 of the Civil Pro. Code and Cr. Pro. Code, chap. VIII, sec. 426, 499 &c. in criminal matters.

for honesty, for repayment of debt, for delivering the debtor's property to the creditor, for appearance. V. P. p. 248 quotes Vyāsa (who mentions seven kinds of sureties) and remarks that all can ultimately be reduced to three varieties.

If the surety for appearance cannot produce the person at the time and place agreed upon, he should in that case pay to the creditor what he has bound himself to pay except where the debtor is prevented from appearing by act of God or of the king. But a period of a fortnight, a month or three fortnights at the most should be allowed to the surety to find out the absconding person[729]. If he can produce him within that time the surety would be free from liability (Kāt. 531, 532, Br. in S. B. E. vol. 33 p. 327 verse 42). If the surety for appearance cannot (even after time is given) produce the debtor or the debtor dies then the surety has to pay from his own pocket the money due from the debtor (Manu VIII. 158 and Kāt. 532–33). All this is subject to the proviso of the act of God or of the king.

Sureties of all kinds are personally liable to make good the loss arising from the non-appearance of the debtor, or from his dishonesty or non-payment (Yāj. II. 53, Viṣṇu VI. 41, Bṛ. in S. B. E. 33 p. 327 v. 41); but the sons of the surety for appearance or honesty were not liable, if the surety died[730]. Yet if the surety for appearance or honesty stood surety only after taking some security from the debtor for so doing, then even the son would be liable to reimburse from such security the person losing. The liability of sons and grandsons for the suretyship debt of the father or grandfather will be discussed a little later on. If there are several sureties, then each will have to pay a proportionate part of the debt; but if each of the sureties has undertaken the whole liability of the debtor (i. e. if the liability of all is joint and several) then the creditor may at his will recover the whole debt from any one of the several sureties

729. नष्टस्यान्वेषणे कालं दद्यात्प्रतिभुवे धनी । देशानुरूपतः पक्षं मासं सार्धमथापि वा ॥ बृह.; नष्टस्यान्वेषणार्थं तु देयं पक्षत्रयं परम् । यद्यसौ दर्शयेत्तत्र मोक्तव्यः प्रतिभूर्भवेत् । काले प्रतीते प्रतिभूर्यदि तं नैव दर्शयेत् । स तमर्थं प्रदाप्यः स्यात्प्रेते चैष विधिः स्मृतः ॥ कात्या.; both q. by स्मृतिच. II. p. 149, व्य. प्र. p. 249, मिता on या. II. 57.

730. आद्यौ तु वितथे दाप्यौ तत्कालावेदितं धनम् । उत्तरौ तु विसंवादे तौ विना तत्सुतौ तथा ॥ बृह. q. by स्मृतिच. II. p. 150, व्य. प्र. p. 250; गृहीत्वा बन्धकं यत्र दर्शनेऽस्य स्थितो भवेत् । विना पित्रा धनात्तस्माद्दाप्यः स्यात्तद्धनं सुतः ॥ कात्या. 534 q. by मिता. on या. II. 54, अपरार्क p. 656, व्य. प्र. p. 251.

(Yāj. II. 55, Nār. IV. 120). Kāt. 538 states[731] a special rule that whichever out of several sureties that have incurred joint and several liability is found present at the place (of the agreement) should be made to pay the debt; if such a surety has gone abroad his son may be made to pay the whole, but if the surety be dead the son should be made to pay only the share of his father (there being several sureties). If a surety being pressed or harassed by a creditor pays openly (before all people) the debt (wholly or in part)[732] then the debtor will be made to pay after three fortnights double of what the surety has to pay (Yāj. II. 56, Nār. IV. 121, Viṣṇu Dh. S. VI. 44, Kāt. 539). But if the surety pays without being pressed he would get only what he paid and if the debtor reimburses the surety without loss of time then he has not to pay double. These rules apply to money lent; but in the case of grain, clothes and liquids the debtor must pay to the surety three, four or eight times respectively (Yāj. II. 57). Who could not be accepted as sureties has already been stated (on pp. 291–292).

Several were the modes of the recovery of debts. Manu (VIII. 47–48) requires the king to make the debtor repay his debt to the creditor in whatever way he can do it. There is a difference in the modes of recovery according as the liability is admitted by the debtor or not. If liability is denied then the only method is to file a suit for the recovery of the debt. But if the liability is admitted by the debtor, then Manu VIII. 49 (= Nār. IV. 122), and Bṛ. (S. B. E. vol. 33 p. 329 v. 54) mention five means of recovery viz. *dharma* (persuasion), *vyavahāra* (legal proceeding), *chala* or *upadhi* (trick), *carita* (sitting down at his door), or *bala* (compulsion to do work or confinement). It appears from Āp. Dh. S. (I. 6. 19. 1) that the method of sitting at the door for recovery of debts was known to Āp. (the creditor so doing is designated *pratyupaviṣṭa*). In a Marwad Inscription

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731. बहवश्चेत्प्रतिभुवो दद्युस्तेऽर्थं यथाकृतम् । अर्थेऽविशेषिते ह्येषु धनिनश्छन्दतः क्रिया । नारद IV. 120, विष्णु. VI. 42; एकच्छायाप्रविष्टानां दाप्यो यस्तत्र दृश्यते । प्रोषिते तत्सुतः सर्वं पित्रंशं तु मृते समम् ॥ कात्या. 538, q. by मिता. on या. II. 55, व्य. म. p. 251. एकच्छायाश्रित or एकच्छायाप्रविष्ट is a technical expression meaning the same as 'undertaking joint and several liability' and is explained by the मिता. as 'एकस्याधमर्णस्य छाया सादृश्यं तामाश्रिता एकच्छायाश्रिता अधमर्णो यथा कृत्स्नद्रव्यदानाय स्थितस्तथा दाने प्रतिभुवोऽपि प्रत्येकं कृत्स्नद्रव्यदानाय स्थिताः'.

732. प्रतिभाव्यं च यो दद्यात्पीडितः प्रतिभावितः । त्रिपक्षात्परतः सोऽर्थं द्विगुणं लब्धुमर्हति ॥ कात्या. 539, q. by अपरार्क p. 657, परा. मा. III. p. 252, वि. र. p. 45; व्य. म. p. 253 ascribes it to both कात्यायन and बृहस्पति.

dated *saṁvat* 1198 (1141–42 A. D.) this practice is called *kāya-vrata* (*yadi brāhmaṇaḥ kāyavratam kṛtvā mriyate*). Vide E. I. vol. XI. p. 37 at p. 40. These modes of recovery except vyavahāra are explained by Bṛhaspati as follows :[733] The method of dharma consists in sending messages (to the debtor) from his friends and relatives, in persuading him to pay with sweet words, by following the debtor (i. e. by persistent dunning) and by frequent requests. Trick consists in the creditor borrowing from the debtor some ornament or other article under the pretext of its being required in a festival and not returning it or in retaining what the debtor has handed over to the creditor for being delivered to another; that is compulsion when the debtor is brought to the creditor's house, is then confined or beaten and thus induced to repay the debt; that is *ācarita* where the creditor keeps tied his own wife or son or cattle at the debtor's house or sits down at his door (fasting). All these methods could not be employed in the case of all debtors. Kāt. (477–480) has already been cited (on p. 383) to show how the king is to employ the various methods in the case of brāhmaṇas, traders &c. If the creditor employs any one of the methods (other than vyavahāra) and harasses a debtor when the latter claims judicial investigation and there is a doubt or dispute between the two as to the amount, the rate of interest, the liability to pay, the creditor would lose his claim and would have to pay a fine equal (to the claim)[734]. Kāt. 589 and Bṛ.[735] (S. B. E. vol. 33, p. 331 verses 63–65) lay this down. But when the debtor admits his liability and yet does not pay and when the creditor therefore employs one of the means (other than a suit) appropriate to the caste and position of the debtor, then, if the debtor complains to the king

733. प्रतिपन्नमृणं दाप्यः सामादिभिरुपक्रमैः । धर्मोपधिबलात्कारैर्गृहसंरोधनेन च ॥ सुहृत्सम्बन्धिसन्दिष्टैः सामोक्त्यानुगमेन च । प्रायेण वा ऋणी दाप्यो धर्म एष उदाहृतः ॥ छद्मना याचितं चार्थमानीय ऋणिकाद्धनी । अन्वाहितादि वाहृत्य दाप्यते यत्र सोपधिः ॥ यदा स्वगृहमानीय ताडनाद्यैरुपक्रमैः । ऋणिको दाप्यते यत्र बलात्कारः स कीर्तितः । दारपुत्रपशून् बद्ध्वा कृत्वा द्वारोपवेशनम् । यत्रर्णी दाप्यतेऽर्थं स्वं तदाचरितमुच्यते ॥ बृह. q. by स्मृतिच. II. p. 164, परा. मा. III. p. 255–256, कुल्लूक on मनु. VIII. 49, व्य. प्र. pp. 256–257.

734. न रोद्धव्यः क्रियावादी सन्दिग्धेऽर्थे कथञ्चन । आसेधयंस्त्वनासेध्यं दण्ड्यो भवति धर्मतः ॥ मद्दातव्यं यद्भवति न्यायतस्तद्ददाम्यहम् । एवं यत्रर्णिको ब्रूते क्रियावादी स उच्यते ॥ रूपसंख्याविलाभेषु यत्र भ्रान्तिर्द्वयोर्भवेत् । देयानादेययोर्वापि सन्दिग्धोऽर्थः स कीर्तितः ॥ अनावेद्य तु राज्ञे यः सन्दिग्धेऽर्थे प्रवर्तते । प्रसह्य स विनेयः स्यात्स चाप्यर्थो न सिध्यति ॥ बृह. in स्मृतिच. II. p. 166, व्य. प्र. pp. 259–260.

735. पीडयेद्यो धनी कश्चिदृणिकं न्यायवादिनम् । तस्मादर्थात्स हीयेत तत्समं चाप्नुयाद्दमम् ॥ कात्या. 589, q. by मिता. on या. II. 40, अपरार्क p. 645, व्य. प्र. p. 260.

against the creditor, the debtor would be compelled by the king to pay the debt and a fine for unnecessary complaint (Yāj. II. 40, Manu VIII. 176, Viṣṇu Dh. S. VI 19). Kāt. (580–584) provides that where[736] it is the custom of the country, the creditor may hold the debtor in restraint openly before an assembly of people until he pays what is due, that when a man so restrained has an inclination to answer calls of nature, he should be followed behind by the creditor or he should be allowed to go alone but fettered, that he should be allowed to go home for his meals and at night if he furnishes a surety, and that the surety will have to remain in restraint (while the debtor is absent), that if the debtor cannot secure a surety or does not accept the proposal of furnishing one he should be confined in jail or should be kept guarded by men; but that a respectable man who is trust-worthy and pure in conduct should not be put in jail, that he should be allowed to go without fetters or after being bound by an oath. Manu VIII. 177, Yāj. II. 43, Nar. IV. 131 lay down that if a debtor is unable to pay a debt then he should be made to do work suitable to his caste in the house of his creditor of the same or higher caste in order to gradually liquidate the debt (but without detriment to his own family) and a brāhmaṇa debtor should be made to pay by easy instalments[737]. Kauṭ. III. 11 provides[738] that agriculturists and king's servants should not be seized (for debts) at the time when it is the season for them to work, nor a woman for her husband's debt unless she has promised to repay her

736. धार्योऽवरुद्धस्त्वृणिकः प्रकाशं जनसंसदि । यावद्वा दद्यादेयं च देशाचारस्थिति-र्यथा ॥ विण्मूत्रशङ्का यत्र स्याद् धार्यमाणस्य देहिनः । पृष्ठतो वानुगन्तव्यो निबद्धं वा समुत्सृ-जेत् ॥ स कृतप्रतिभूश्चैव मोक्तव्यः स्यादिने दिने । आहारकाले प्राप्ते च निबन्धे प्रतिभूः स्थितः ॥ यो दर्शनप्रतिभुवं नाधिगच्छेन्न चाश्रयेत् । स चारके निरोद्धव्यः स्थाप्यो वा नेद्य रक्षिणः ॥ न चारके निरोद्धव्य आर्यः प्रात्ययिकः शुचिः । सोऽनिबद्धः प्रमोक्तव्यो निबद्धः शपथेन वा ॥ कात्या. 580–584 q. by स्मृतिच. II. p. 165, वि. र. pp. 69–70, व्य. प्र. pp. 257–258. वि. र. p. 67 says that the mode in the first verse is a method of व्यवहार. In modern times a debtor who owes a decretal debt can be kept in civil jail under Order 21 rules 37–40 of the Civil Pro. Code. In most European countries imprisonment for debts was abolished only in the 2nd half of the 19th century. Even now in England under certain circumstances a judgment debtor may be imprisoned for 42 days. For चारके निरोद्धव्यः vide दशकुमारचरित I. p. 36 'सा च वृद्धकन्या ... चारके निरोद्धव्येति'.

737. निर्धनस्त्वृणिकं कर्म गृहमानीय कारयेत् । शौण्डिकाद्यं ब्राह्मणस्तु दापनीयः शनैः शनैः ॥ बृह. q. by वि. र. p. 71, व्य. प्र. p. 261.

738. अग्राह्याः कर्मकालेषु कर्षका राजपुरुषाश्च । स्त्री चाप्रतिश्राविणी पतिकृतमृणमन्यत्र गोपालकार्धसीतिकेभ्यः । अर्थशास्त्र III. 11.

husband's debt, but wives of cowherds and those who take a lease of lands for half produce may be arrested for non-payment by the husband. As compared with the harsh legislation against debtors in most ancient and medieval systems of jurisprudence the rules laid down by the smṛtis are very mild and humane[739]. If there were several creditors there was priority among them i. e. the earlier debt prevailed over the later one; a brāhmaṇa creditor however (whatever the date of his advance) was preferred to a kṣatriya or other creditor (Yāj. II. 41, Kāt. 514). Kauṭ.[740] states that the debts owed to the Crown and a śrotriya take precedence over other debts and that unless the debtor is going to abscond several creditors should not simultaneously proceed against one debtor. Section 56 of the Bombay Land Revenue Code makes Government assessment a paramount charge on the land. But acc. to Kāt. (513) if several debts were contracted in writing on the same date, they should all be treated as equal and paid off *pro rata* from the debtor's assets if insufficient; but, if a creditor established that a particular article belonging to a debtor was manufactured by the debtor with his money only, that creditor alone got the money recovered by sale of the article (Kāt. 515). Bharadvāja states[741] that if a debtor has no cash then the creditor should be paid by sale of the debtor's other property in order viz. grain, gold, iron, cattle, clothes, land, slaves, and conveyances, (in the absence of fields) his garden and lastly his house and in the absence of even a house time should be granted to debtors of the three higher castes.

739. Under the law of the Twelve Tables in Rome a creditor could put the debtor to death or sell him to a stranger beyond the Tiber or, if there were several creditors, they could divide the body of the debtor among themselves after the third market day (Table III in Ortolan's Roman Law p. 106). Vide Sen's 'Hindu Jurisprudence' pp. 316-17 for later Roman and Irish rules.

740. नानर्णसमवाये तु नैकं द्वौ युगपदभिवदेयातामन्यत्र प्रतिष्ठमानात् । तत्रापि गृहीतानुपूर्व्या । राजश्रोत्रियद्रव्यं वा पूर्वं प्रतिपादयेत् । कौटिल्य III. 11; नानर्णसमवाये तु यद्यत्पूर्वकृतं भवेत् । तत्तदेवाग्रतो देयं राज्ञः स्याच्छ्रोत्रियादनु । कात्या. q. by स्मृतिच. II. p. 167, स. वि. p. 255.

741. ऋणिकस्य धनाभावे देयोऽन्योऽर्थस्तु तत्क्रमात् । धान्यं हिरण्यं लोहं वा गोमहिष्यादिकं तथा ॥ वस्त्रं भूदासवर्गं च वाहनादि यथाक्रमम् । धनिकस्य तु विक्रीय प्रदेयमनुपूर्वशः । क्षेत्राभावे तथारामस्तस्याभावे गृहक्रयः । द्विजातीनां गृहाभावे कालहारो विधीयते ॥ भरद्वाज q. by व्यव. नि. p. 254, परा. मा. III. 259, व्यवहारसार p. 116. In view of this passage the remark of Mr. Golap Chandra Sarkar in his 'Hindu Law' (7th ed. of 1933) p. 432 'Hindu Law nowhere contemplates a compulsory sale of immovable property in execution of decrees' seems hardly correct.

When a debtor was not able to return the entire debt in a lump, he should write on the back of the document of debt the sums paid by him from time to time or the creditor may pass a receipt (*upagata* or *praveśapatra*, as the Mit. designates it) to the debtor signed by himself (Yāj. II. 93, Nār. IV. 114, Viṣṇu Dh. S. VI. 26). If the creditor, though requested by the debtor, would not pass a receipt he was to lose the balance of his debt (Nār. IV. 114). Nār. IV. 115 and Bṛ. (S. B. E. vol. 33 p. 332 verse 66) further provide that if the creditor does not write down (either on the bond itself or in a separate document) the money recovered by *dharma* or some other method then the debtor himself will be entitled to interest on the amount paid by him.[741a] When the whole debt is paid off, the creditor should tear off the bond of debt or he may execute another document in order to show that the debtor is freed from the debt (if the original is lost or is not within easy reach) and when a debt is borrowed in the presence of witnesses, it should be returned in the presence of the same or other witnesses (Yāj. II. 94, Viṣṇu Dh. S. VI. 24–25). Nār. IV. 116 requires the creditor to return the document when the whole debt is paid off or to announce openly to others that it has been paid[742].

It has now to be seen who (other the man himself) are liable to pay a man's debt. The liability to pay another's debt may arise on three grounds, (1) religious, (2) equitable and moral, (3) legal, such as agency (express or implied) or authority. That the sons and grandsons of the original debtor are liable to pay on religious grounds the debt of the father is expressly stated by numerous writers such as Kauṭ.[743] III. 11, Yāj. II. 50, Nār. IV. 4, Bṛ. (S. B. E. vol. 33 p. 328 verse 49), Kāt. (560), Vṛddha-Hārīta VII. 250–51, Viṣṇu Dh. S. VI. 27.

741 a. धर्मादिनोद्ग्राह्य धनं यस्तूपरि न लेखयेत् । न चैवोपगतं दद्यात्तस्य तद्वृद्धिमाप्नुयात् ॥ बृह. q. by वि. र. p. 80, व्य. प्र. p. 277.

742. लेख्यं दद्याद्विशुद्धर्णे तदभावे प्रतिश्रयम्। धनिकर्णिकयोरेवं विशुद्धिः स्यात्परस्परम्॥ नारद IV. 116. असहाय explains 'प्रतिश्रयं विशुद्धिपत्रम्', while the स्मृतिच. II. p. 162 and व्य. प्र. p. 277 read प्रतिश्रवम् and explain 'प्रतिदानं कृतमिति साक्षिभिः श्रावणम्'.

743. जीवितविवाहभूमिप्रातिभाव्यमसंख्यातदेशकाले तु पुत्राः पौत्रा वा वहेयुः । अर्थशास्त्र III. 11 ; क्रमादव्याहृतं प्राप्तं पुत्रैर्यदृणमुद्धृतम् । दद्युः पैतामहं पौत्रास्तच्चतुर्थान्निवर्तते ॥ नारद IV. 4 ; ऋणमात्मीयवत्पित्र्यं देयं पुत्रैर्विभावितम् । पैतामहं समं देयमदेयं तत्सुतस्य तु ॥ बृह. q. by the मिता. on या. II. 50 ; पुत्राभावे तु दातव्यमृणं पौत्रेण यत्नतः । चतुर्थेन न दातव्यं तस्मात्तद्विनिवर्तते ॥ कात्या. 560 q. स्मृतिच. II. p. 171, परा. मा. III. p. 264, वि. र. p. 49, व्य. प्र. p. 264.

The important question is whether the smṛtis declare the liability of the great-grandson. It is clear that smṛtis like that of Bṛ. expressly say that the great-grandson is not liable to pay his great-grandfather's debt. The Viṣṇu Dh. S. VI. 28 says that the descendants beyond the grandson need not pay if they are unwilling to pay. Others like Nār. IV. 4 and Kāt. say that the obligation to return a debt ceases from the fourth. The question is what is meant by the fourth i. e. is it meant to exclude, in calculating, the original debtor or to include him ? It is possible to hold (particularly because the great-grandson is not expressly mentioned in most smṛtis) that the fourth means 'inclusive of the original debtor'. But this appears to be in conflict with the rule in Manu IX. 137 (which is the same as Baud. Dh. S. II. 9. 6, Vas. 17. 5, Viṣṇu Dh. S. 15. 46) that the son, grandson, and great-grandson confer the greatest spiritual benefit on the ancestor, the rule (Manu IX. 186, Nār. IV. 6) that *piṇḍas* (in *śrāddha*) are to be offered by three persons in descent and the general rule that whoever takes the inheritance must offer the piṇḍa and pay the debts of the ancestor (Gaut. XII. 37, Yāj. II. 51, Nār. IV. 23, Viṣṇu Dh. S. XV. 40 and VI. 29). Therefore, following the canons, viz. the rights to property are co-extensive with the liability to perform śrāddha and to pay off debts (which is quite logical and reasonable), that the texts relating to the same subject matter must be harmonized and reconciled as far as it is reasonably possible[744] to do (*ekavākyatā-nyāya*), that apparently conflicting texts are to be assigned their appropriate spheres (*viṣayavyavasthā*), and that a direct conflict (and so an option) is to be presumed only if no other recourse is open, the Mitākṣarā and other commentators put forward the interpretation that the texts stating that the great-grandson is not liable to pay the great-grandfather's debt apply only to cases where the great-grandson inherits no ancestral property, but that he *is liable* if he takes ancestral property. Dr. Jolly in his note on Nār. IV. 6 (in S. B. E. vol. 33 p. 44) remarks: "the doctrine, viz. the liability to pay debts contracted

744. This principle is stated by the मिता. on या. I. 4-5 as 'एतेषां (मन्वादीनां) प्रत्येकं प्रामाण्येपि साकाङ्क्षाणामाकाङ्क्षापरिपूरणमन्यतः क्रियते विरोधे विकल्पः ।.' मेधातिथि on मनु. XI. 216 puts it in the same way 'एकशास्त्रत्वात्सर्वस्मृतीनामसति विरोधे समग्रं योज्यं विरोधे तु विकल्पः'. This view is based on जैमिनि II. 1. 46 अर्थैकत्वादेकं वाक्यं साकांक्षं चेद्विभागे स्यात्. The word एकवाक्यता occurs in Vedantasūtra III. 4. 24. In *Vithal v. Prahlad* 39 Bom. 373 at p. 379 this principle has been judicially recognized.

by an ancestor extends to the great-grandson, is opposed to the teaching of such an eminent authority as *Vijñāneśvara, who maintains in the Mitākṣarā that the great-grandson*[745] *is not liable for debts contracted by his great-grandfather*, and conversely that he does not inherit his property'. He makes similar remarks in his Tagore Law Lectures for 1885 (on 'adoption, partition' &c. p. 171). Dr. Jolly is under some misapprehension since the Mit. in two places deals with this matter and expressly states that the great-grandson is liable to pay debts contracted by his great-grandfather if he has taken ancestral estate but not otherwise. The following propositions are deducible from the smṛti texts and authoritative commentaries like the Mit. and the Vīramitrodaya (Vyavahāraprakāśa). The[746] first proposition is that the debts of a man must be paid by his three descendants (son, grandson and great-grandson) if they have ancestral estate in their hands (Mit. on Yāj. II. 51 quoted in note 745, Sm. C. II. p. 171, V. P. p. 264). The 2nd proposition is that even when no ancestral estate was taken by the descendants the son was liable to pay his father's debts with interest, the grandson was liable to pay his grandfather's debt but without interest and the great-grandson was not liable to pay even the principal, if he was unwilling to pay. This proposition is enunciated by Viṣṇu Dh. S. VI. 27-28, Bṛ. (S. B. E. vol. 33 p. 328

745. On ऋणमात्मीय &c. of बृहस्पति referred to above the मिता. (on या. II. 50) remarks, 'समं यावद्गृहीतं तावदेव देयं न वृद्धिः । तत्सुतस्य प्रपौत्रस्य अदेयमगृहीतधनस्य । एतच्चोत्तरश्लोके स्पष्टयिष्यते'. On the words पुत्रहीनस्य रिक्थिनः (on या II. 51) the मिता. explains: इत्येतदपि पुत्रपौत्रहीनस्य प्रपौत्रादयो यदि रिक्थं गृह्णन्ति तदा ऋणं दाप्याः नान्यथेत्येवमर्थम् । पुत्रपौत्रौ च रिक्थग्रहणाभावेपि दाप्यावित्युक्तम् ।'. Dr. Jolly probably misunderstood 'अगृहीतधनस्य' and held it to mean 'that a great-grandson does not take the ancestral estate', but it really means 'if he has not taken &c.' The स्मृतिच. II. p. 171 says, 'एवं च प्रपितामहादिकृतर्णापकरणानधिकारो चतुर्थादेरगृहीतरिक्थस्यैव न पुनर्गृहीतरिक्थस्येत्यवगन्तव्यम् । ... गृहीतरिक्थानां तु पौत्राणामधिकारो वृद्धिसाहितऋणापाकरणे । देयं पैतामहं सममित्यस्यागृहीतरिक्थविषयत्वात् ।'

746. The first proposition is followed by modern decisions in British India. Vide *Lachman Das v. Khunnu* 19 All. 26 (F. B.) which holds that the mortgagee of a man who had mortgaged joint ancestral property can enforce his mortgage against the grandson of the mortgagor for the realization of *interest* as well as principal, *Ladu Narain v. Gobardhan* 4 Patna 478, *Masit Ullah v. Damodar Prasad* 48 All. 518 (P. C.) where the Privy Council held that the great-grandson is liable for the debts of his great-grandfather as much as he is liable for those of his father or grandfather. In all these cases passages from the smṛtis of Yāj., Nār. and Bṛ. and from the Mit. and the Vīramitrodaya are quoted and discussed.

v. 49 referred to on p. 443) and Kāt. 556[747]. In *Narasimharav v. Antaji* 2 Bom. H. C. R. 61 it was held (probably following Bṛhaspati, though not quoted in the judgment) that the grandson was liable to pay the debt of his grandfather without interest even if there was no ancestral estate. This was felt to be a great hardship on heirs (taking no ancestral estate) and in order to remove it Bombay Act VII of 1866 (the Hindu Heirs' Relief Act) was passed whereby it is provided that a son or grandson is not liable to be sued for the debts of his deceased ancestor merely by reason of his being such a son or grandson and that the son, grandson or other heir shall be liable only to the extent of the assets that come to his hands. The same is the law laid down in other parts of India by judicial decisions. Bṛ. (S. B. E. vol. 33 p. 328 verse 48) recommends that the father's debt must be paid first of all and after that one's own debt; but a debt of the grandfather must always be paid even before the preceding[748] two kinds of debt. These two propositions of Hindu jurists are very lucidly, but succinctly, set forth by the Vīramitrodaya quoted below[749]. The third proposition (which is an exception to the above two) is that even a son is not liable to pay certain illegal and immoral debts of his father. This proposition will be discussed a little further on. A fourth proposition is that even when the father is not dead, the son, grandson or great-grandson may be liable to pay the father's or other ancestor's debt under certain circumstances. Yāj. II. 50 provides that sons (and grandsons) must pay the debt of the father when he is dead or has gone to a distant country or is afflicted with an incurable disease. Nār.[750] IV. 14, Viṣṇu VI. 27, Kāt.

747. पैतामहं तु यत्पुत्रैर्न दत्तं रोगिभिः स्थितैः । तस्मादेवंविधं पौत्रैर्देयं पैतामहं समम् ॥ कात्या. 556 q. by स्मृतिच. II. p. 170 and वि. र. p. 48.

748. पित्र्यमेवाग्रतो देयं पश्चादात्मीयमेव च । तयोः पैतामहं पूर्वं देयमेवमृणं सदा ॥ बृह. q. by व्य. म. p. 185, वि. र. p. 47, परा. मा. III. p. 264.

749. पुत्रेण रिक्थग्रहणाग्रहणयोः सवृद्धिकमेव देयम् । पुत्राभावे पौत्रेण रिक्थग्रहणे सोदयं देयम् । अग्रहणे मूलमेव । प्रपौत्रेण तु रिक्थाग्रहणे मूलमपि न देयम् । व्य. प्र. p. 264.

750. धनग्राहिणि प्रेते प्रव्रजिते द्विदशसमाः प्रवासिते वा तत्पुत्रपौत्रैर्धनं देयम् । विष्णु. VI. 27; विद्यमानेपि रोगार्ते स्वदेशात्प्रोषितेपि वा । विंशात्संवत्सराद्देयमृणं पितृकृतं सुतैः ॥ व्याधितोन्मत्तवृद्धानां तथा दीर्घप्रवासिनाम् । ऋणमेवंविधं पुत्रान् जीवतामपि दापयेत् ॥ सांनिध्येपि पितुः पुत्रैर्ऋणं देयं विभावितम् । जात्यन्धपतितोन्मत्तक्षयश्वित्रादिरोगिणः ॥ कात्या. 548–550 q. by अपरार्क. p. 650, वि. र. pp. 50–51, परा. मा. III. 264, स्मृतिच. II. p. 169, व्यव. नि. pp. 255–56. Some of these ascribe the last to बृहस्पति. The first and third verses of Kāt. are quoted in *Peda Venkanna v. Sreenivasa* 41 Mad. 136 at p. 149. The व्यव. नि. (p. 256) remarks that these texts indicate that during the father's lifetime only the sons are liable for the father's debts and not the grandsons, but if no sons are alive then even grandsons will be liable.

548–550 state that when the father, though living and near, becomes an ascetic (acc. to Viṣṇu), is afflicted with such diseases or calamities as blindness from birth or loss of caste (due to grave sins), lunacy, tuberculosis, leprosy and other (incurable) diseases or when he has left his country or has gone on a long journey or is very old (above 80) the son will have to pay the debt of the father after the twentieth year (from his going abroad). Acc. to V. R. (p. 50) if the father's disease was incurable or if it was certain that he would not return from his journey then the son was bound to pay at once and was not entitled to wait for 20 years. Kāt. (552–553) introduces[751] a further restriction that even when the father is dead, if the son has not attained years of discretion (i. e. if he is a minor) he need not pay the debt of his father during his minority; but when the proper time to pay arrives he must pay the debt; otherwise the (ancestors) may remain in hell. Thus the son's liability during the father's lifetime or absence was not absolute but limited according to the smṛtis and digests; judicial decisions, however, have brushed all this aside and the son's liability to pay his father's debts during the latter's lifetime is now as absolute as after his death. This will be discussed further on.

According to all smṛti writers even the son, though he may have taken the ancestral estate, is not liable to pay certain debts of the father which are compendiously described as 'illegal or immoral' in the decisions of courts. Gaut.[752] XII.

751. नाप्राप्तव्यवहारेण पितर्युपरते क्वचित् । काले तु विधिना देयं वसेयुर्नरकेऽन्यथा । अप्राप्तव्यवहारश्चेत्स्वतन्त्रोपि हि नर्णभाक् । स्वातन्त्र्यं हि स्मृतं ज्येष्ठे ज्यैष्ठ्यं गुणवयःकृतम् ॥ कात्या. 552–553 q. by स्मृतिच. II. p. 164, व्य. प्र. p. 263. The 2nd is नारद IV. 31.

752. प्रातिभाव्यवणिक्शुल्कमद्यद्यूतदण्डाः पुत्रानाभ्याभवेयुः । गौ. XII. 38; प्रातिभाव्यं दण्डशुल्कशेषमाक्षिकं सौरिकं कामदानं च नाकामः पुत्रो दायादो वा रिक्थहरो दद्यात् । अर्थशास्त्र III. 16; सुराकामद्यूतकृतं दण्डशुल्कावशिष्टकम् । वृथादानं तथैवेह पुत्रो दद्यान्न पैतृकम् ॥ दर्शनप्रतिभूर्यत्र मृतः प्रात्ययिकोपि वा ॥ न तत्पुत्रा ऋणं दद्युर्दद्युर्दानाय यः स्थितः ॥ या. II. 47, 54; न पुत्रर्णं पिता दद्याद्दद्यात्पुत्रस्तु पैतृकम् । कामक्रोधसुराद्यूतप्रातिभाव्यकृतं विना ॥ नारद IV. 10; दण्डं वा दण्डशेषं वा शुल्कं तच्छेषमेव वा । न दातव्यं तु पुत्रेण यच्च न स्याद्व्यावहारिकम् ॥ उशनस् q. by मिता. on या. II. 47; कात्यायन explains कामक्रोधकृत debts (mentioned in Nār. IV. 10 and Bṛ.) as follows: 'परपूर्वस्त्रियै यत्तु विद्यात्कामकृतं तृणाम् । यत्र हिंसां समुत्पाद्य क्रोधाद् द्रव्यं विनाश्य वा । उक्तं तुष्टिकरं यत्तु विद्यात् क्रोधकृतं हि तत् ॥ कात्या. q. by अपरार्क p. 648, स्मृतिच. II. p. 170, परा. मा. III. p. 266, वि. र. p. 58, व्य. प्र. p. 266; वृथादान is explained as धूर्ते बन्दिनि मल्ले च कुवैद्ये कितवे शठे । चाटचारणचौरेषु दत्तं भवति निष्फलम् ॥ q. by मिता. on या. II. 47, स्मृतिच. II. p. 170.

38, Kauṭ. III. 16, Manu VIII. 159–160, Vas. 16. 31, Yāj. II. 47 and 54, Nār. IV. 10, Bṛ. (S. B. E. vol. 33 p. 329 verse 51), Kāt. (564–565), Uśanas and Vyāsa provide that the son is not bound to pay the following debts of his father viz. those incurred as a surety (for honesty or appearance), for drinking or in gambling, those arising from idle promises (to bards, wrestlers and the like), debts for promises made under the influence of wrath or illicit love to women, the balance of a fine or toll and those that are not *vyāvahārika*. A debt arising from wrath is explained by Kāt. as one where the father causes physical injury to another or destroys another's property through anger and then promises something to pacify the person wronged. As regards the suretyship debts of the father, Yāj. II. 54, Vyāsa and Kāt. (561) provide that when the father was a surety for payment, then the son was bound to pay the principal of the debt for which the father stood surety, but the son of the son was not liable at all to pay the suretyship debt of his grandfather even when the latter was a surety for payment[753]. These verses about the debts which the son was not bound to pay have been quoted and explained in numerous decisions of the courts. But as this work does not profess to be a treatise on modern Hindu Law those cases are passed over here. What is meant by 'debts that are not vyāvahārika' has presented the greatest difficulty to the medieval commentaries and digests and also to modern courts as noted below[754]. Kāt. 534 further notes that

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753. ऋणं पैतामहं पौत्राः प्रातिभाव्यागतं सुतः । समं दद्यात्तत्सुता तु न दाप्याविति निश्चयः ॥ व्यास q. by the मिता. on या. II. 54; प्रातिभाव्यागतं पौत्रैर्दातव्यं न तु तत्क्वचित् । पुत्रेणापि समं देयमृणं सर्वत्र पैतृकम् ॥ कात्या. q. by अपरार्क p. 656, वि. र. p, 44.

754. यत्र न व्यावहारिकं न न्याय्यमित्यर्थः । अपरार्क p. 658; 'सौरिकम्' स्मृतिच. II. p. 170; न व्यावहारिकं सुरापानादिनिमित्तम् । व्य. प्र. p. 265: न कुटुम्बोपयोगीत्यर्थः । बालम्भट्टी; व्यवहारबहिष्कृतम् । वि. चि. p. 17. Colebrooke translates न व्यावहारिकं as 'debt for a cause repugnant to good morals'; other renderings are 'which as a decent and respectable man the father ought not to have incurred' (32 Bom. 348 at p. 351); 'not lawful, usual or customary' (39 Cal. p. 862. at pp. 868–869); 'not supportable as valid by legal arguments and on which no right could be established in a court of justice in the creditor's favour' (37 Mad, 458 at p. 460); vide *Bai Mani v. Usafali* 33 Bom. L. R. 130 (at p. 133) and *Bal v. Maneklal* 56 Bom. 36 where the various meanings of 'avyāvahārika' and the conflict of judicial decisions are set out (at pp. 50–53). In the latter case the wide meaning of the words given in 32 Bom. 348 has been disapproved of (at p. 53). In *Govindprasad v. Raghunathprasad* I. L. R. (1939) Bom. 533 a Full Bench has dealt with the meaning of 'avyāvahārika'. In *Hemraj v. Khemchand* I. L. R. (1943) All. 727 the Privy Council state the various renderings of avyāvahārika given by different authors and judges and hold that Colebrooke's rendering makes the nearest approach to the real meaning of the word as used in the smṛtis and that it is the character of the debt that is to be looked to and not the actions of the father.

where the father became a surety for appearance (or honesty) after receiving a pledge from the person whose surety he became, then the son of the surety may be made to pay the money due from that pledge in case the father is dead or has gone abroad[755].

The case law on the subject of the father's debts and the son's liability to pay them has assumed enormous proportions. This is not the place to discuss the case-law. But as the courts in India profess to follow the Hindu Law of the sages and medieval digests, it is necessary to examine some of the principles laid down by the latest decision of the Privy Council. In *Brij Narain* v. *Mangla Prasad* 51 I. A. 129 (=46 All. 95) the following five propositions are laid down by the Privy Council (at p. 139): (1) the managing member of a joint undivided estate cannot alienate or burden the estate *qua* manager except for purposes of necessity; (2) if he is the father and the other members are the sons, he may, by incurring debt, so long as it is not for an immoral purpose, lay the estate open to be taken in execution proceeding upon a decree for payment of that debt; (3) if he purports to burden the estate by mortgage then, unless that mortgage is to discharge an antecedent debt, it would not bind the estate; (4) antecedent debt means antecedent in fact as well as in time, that is to say, that the debt must be truly independent and not part of the transaction impeached; (5) there is no rule that this result is affected by the question whether the father, who contracted the debt or burdened the estate, is alive or dead. It

755. गृहीत्वा बन्धकं यत्र दर्शनस्य स्थितो भवेत् । विना पित्रा धनं तस्माद् दाप्यः स्यात्तदृणं सुतः ॥ कात्या. 534, q. by the Mit. on Yāj. II. 54, अपरार्क p. 656. Vide *Choudhuri Govind Chandra* v. *Hayagriba* 10 Patna 94, where it was held that when a father stood surety for the honesty or good behaviour of another as guardian for a minor's property, the son was not bound to pay the suretyship debt of the father. In *Kottapalli v. Kanuparti* 58 Mad. 375, where the father executed a surety bond that a certain judgment debtor would file an insolvency petition within a specified period and the debtor failed to do so, it was held that the guarantee was one for confidence or honesty and that the sons were not liable on the father's death. Similarly in *Dhir Narain v. Shiva Sahay* A. I. R. 1935 Patna 127 it was held that sons are not liable under Hindu Law where the father stood surety for appearance only. In *Narayan v. Venkatacharya* 6 Bom. L. R. 434 it was held that under the law of the Mitākṣarā a grandson is not liable to pay a debt which his grandfather contracted as a surety unless the latter in accepting the liability of a surety received some consideration for it.

is necessary to see how far these principles agree with or deviate from the law of the *smṛtis* and the digests. The first proposition is in consonance with the law of the smṛtis and of the commentaries like the Mit. Yāj. II. 45 provides[756] that whatever debt is contracted by the head of the joint family for the necessities of the family has to be paid by the members who take the ancestral estate when the head is dead or goes to a foreign country. The Mit. on Yāj. II. 114 quotes and explains a smṛti text " Even one (the head or manager of a joint family) can make a mortgage, sale or gift of immovable property in a time of distress, for the necessities of the family and particularly for religious and charitable purposes ". What is meant by ' debts in times of distress ' and ' kuṭumbārthe ' is explained by Kāt. (542–43) quoted in n. 756. This has been the foundation of numerous cases, the first and the most important of which is that of *Hunoomanpersaud* v. *Mussumut Babooee*[757] 6 Moore's Indian Appeals p. 393 (P. C.). The 2nd proposition laid down

756. अविभक्तैः कुटुम्बार्थे यदृणं तु कृतं भवेत्। दद्युस्तद्रिक्थिनः प्रेते प्रोषिते वा कुटुम्बिनि॥ या. II. 45; कुटुम्बार्थमशक्तेन गृहीतं व्याधितेन वा। उपप्लवनिमित्ते च विद्यादापत्कृते तु तत्॥ कन्यावैवाहिकं चैव प्रेतकार्ये च यत्कृतम्। एतत्सर्वं प्रदातव्यं कुटुम्बेन कृतं प्रभोः॥ कात्या. q. by अपरार्क p. 647, परा. मा. III. p. 268. Nār. IV. 3, Manu VIII. 166, Viṣṇu Dh. S. VI. 39 contain similar provisions, all of them employing the word कुटुम्बार्थे (for the purposes or benefit of the family).

757. At pp. 423 and 424 of 6 Moore's Indian Appeals the Privy Council employ the following words that have become classical : 'The power of the manager for an infant heir to charge an estate not his own is under the Hindu Law a limited and qualified power. It can only be exercised rightly in a case of need or for the benefit of the estate. The actual pressure on the estate, the danger to be averted or the benefit to be conferred upon it in the particular instance, is the thing to be regarded....They think that if the lender does inquire and acts honestly, the real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of his charge and they do not think that under such circumstances, he is bound to see to the application of the money '. The words ' the actual pressure, the benefit to be conferred ' and the remarks about inquiry by the lender are a prolific source of litigation and have given rise to a mass of case-law. In L. R. 51 I. A. 129 at p. 137 the Privy Council themselves say that the distinction made between secured and unsecured debts of the father is anomalous. They give an instance. 'A father who is manager borrows a like sum from A and B. To A he gives a mortgage on the family estate containing a personal covenant. To B he gives a simple acknowledgment of loan. B sues and gets a decree ; on this decree execution can follow and the estate can be taken. A, suing on his mortgage, cannot recover ' (because the debt was not antecedent).

above also follows from several smṛtis (such as Yāj. II. 50, Viṣṇu Dh. S. VI. 35, Nār. IV. 2, 4, 6) and the rules about immoral debts cited above. But it is difficult to understand why the Privy Council make a distinction between a simple personal money debt of the father and a debt secured by a mortgage (as in propositions 2 and 3). The ancient texts and commentaries make no such distinction. Vide 42 Mad. 711 at p. 731, 26 Bom. 206 at pp. 217-219 (F. B.) and 60 Bom. 311 (F. B.) where this is pointed out. With the greatest respect it must be said that the distinction is not only without dharmaśāstra authority, but is also anomalous. The distinction between 'antecedent debt' and a debt contracted at the time of executing a mortgage is unknown to the smṛtis or digests. The Privy Council had used for the first time in a very early case (viz. *Suraj Bunsi* v. *Sheo Proshad* 6 I. A. 88 at p. 106 = 5 Cal. 148, 171) the words 'antecedent debt'[758] for which there is nothing corresponding in the Sanskrit authorities and round which elaborate arguments came to be centred in numerous later cases. According to the Privy Council (proposition 5) the son's pious duty to pay his father's debt is as absolute during the father's lifetime as after his death. It has been shown above that the duty was not absolute but qualified and limited during the father's life according to the smṛtis.

Yāj. II. 52, Kauṭ. (III. 11) provide[759] that husband and wife, father and son and brothers cannot, as long as they are undivided, stand sureties for each other or be debtors and creditors of each other or be witnesses for each other. The Mit. has a long note on Yāj. II. 52. It shows that a wife may be divided as to estate from the husband if the latter desires (as laid down in Yāj. II. 114) and that in that case there may be the relation of debtor and creditor between them.

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758. The proposition laid down in 6 I. A. at p. 106 is 'where joint ancestral property has passed out of a joint family, either under a conveyance executed by a father in consideration of *an antecedent debt* or in order to raise money for an *antecedent* debt or under a sale in execution of a decree for the father's debt, his sons, by reason of their duty to pay their father's debts, cannot recover that property, unless they show that the debts were contracted for immoral purposes and that the purchasers had notice that they were so contracted'.

759. भ्रातॄणामथ दम्पत्योः पितुः पुत्रस्य चैव हि । प्रातिभाव्यमृणं साक्ष्यमविभक्ते न तु स्मृतम् । या. II. 52; दम्पत्योः पितापुत्रयोः भ्रातॄणां चाविभक्तानां परस्परकृतमृणमसाध्यम् । कौटिल्य III. 11.

The Mit. further explains the sūtras of Āpastamba[760] (Āp. Dh. S. II. 6. 14. 16–19) which lay down ' there can be no division between husband and wife, for since the day of marriage they have to perform religious rites together, they also participate together in the rewards of merit arising from religious rites and also in the wealth acquired; for this reason when the husband has gone abroad if the wife spends on necessary occasions (out of the family wealth) it is not declared to be theft '. The Mit. explains that the absence of division between husband and wife is restricted to religious rites performed with *śrauta* fires or *smārta* fire and in the rewards of meritorious acts and not in all actions or as to all property. Therefore in other charities where no sacred fire is required (*pūrta* acts such as constructing a well or a public park) they have separate rights. Vide S. V. pp. 353 for various explanations of Bhāruchi and others on Āp. Dh. S. and V. P. pp. 255–56.

The father is not bound to pay his son's personal debt; the husband is not liable to pay the wife's debt, nor the wife her husband's or son's. But in all these cases if the debt is incurred for the benefit or purposes of the family by the son, the wife or the husband then the father, husband or wife respectively would be liable (Yāj. II. 47, Nār. IV. 10–11, Kāt. 545, 579)[761]. If the father promised to pay his son's individual debt or if he approved or acquiesced in it he was liable to pay it. Manu VIII. 167, Yāj. II. 45, Nār. IV. 12, Bṛ. (S. B. E. 33 p. 329 v. 50), Kāt. (545) provide that a debt incurred for the purposes of the family by any one such as the son, brother, uncle, the wife, the mother, the pupil or a servant or a slave even without the consent of the head of the family when he has gone abroad, should be paid by the head of the family. This liability and the liability when the manager of a family contracts a debt for the benefit or necessities of the family arise from agency (*implied*) or authority. Kauṭ. (III. 11) holds that the husband may be seized (for work)

760. जायापत्योर्न विभागो विद्यते । पाणिग्रहणाद्धि सहत्वं कर्मसु । तथा पुण्यफलेषु द्रव्यपरिग्रहेषु च । न हि भर्तुर्विप्रवासे नैमित्तिके दाने स्तेयमुपदिशन्ति । आप. ध. सू. II. 6. 14. 16–19.

761. प्रोषितस्यामतेनापि कुटुम्बार्थमृणं कृतम् । दासस्त्रीमातृशिष्यैर्वा दद्यात्पुत्रेण वा प्रभुः ॥ कात्या (545) q. by अपरार्क p. 648, परा. मा. p. 268, वि. र. 56. अपरार्क reads दासस्त्र्यमात्यशिष्यैर्वा. अमात्य would mean agnates residing in the house. This verse is quoted in *Virasvami v. Appasvami* 1 Mad. H. C. R. p. 375, 379n. पितृव्यभ्रातृपुत्रस्त्रीदासशिष्यानुजीविभिः । यद् गृहीतं कुटुम्बार्थे तद् गृही दातुमर्हति ॥ बृह. q. by स्मृतिच. II. p. 174.

if he starts to go abroad without providing for the return of the debt contracted by his wife.[762]

The general rule that the husband was not liable to pay the wife's debt had an exception viz. the husband was liable for the debts of the wife in the case of cowherds, vintners, actors, washermen and hunters (and the like) whose income depends on their wives and whose household expenses are defrayed by their wives (Yāj. II. 48, Viṣṇu Dh. S. VI. 37, Nār. IV. 19). Similarly the rule that the wife was not liable for the husband's debt had certain exceptions, viz. a debt of the husband which she promised to pay because he was dying or going abroad or which was contracted jointly with her husband[763] (Yāj. II. 49, Nār. IV. 16-17). The Mit. on Yāj. II. 49 answers the objection raised by some that, as according to Manu VIII. 416 (= Udyogaparva 33. 64) the wife, son and slave are without property and whatever they earn is acquired for him to whom they belong, the wife would not be able to pay anything at all. The reply is that this verse of Manu does not mean that a wife or son can own no property at all, but all that it declares is that they have no independent power to dispose of their property.

The order in which persons are liable to pay a man's debts after his death is declared by Yāj. II. 51, Nār. IV. 23, Bṛ. (S.B.E. vol. 33 p. 329 verse 52), Kāt. (562, 577), Viṣṇu[764] VI. 29-30.

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762. पतिस्तु ग्राह्यः स्त्रीकृतमृणमप्रतिविधाय प्रोषित इति । अर्थशास्त्र III. 11.

763. न स्त्री पतिकृतं दद्यादृणं पुत्रकृतं तथा । अभ्युपेतादृते यद्वा सह पत्या कृतं भवेत् ॥ नारद IV. 16; भर्त्रा पुत्रेण वा सार्धं केवलेनात्मना कृतम् । ऋणमेवंविधं देयं नान्यथा तत्कृतं स्त्रिया ॥ मर्तुकामेन या भर्त्रा प्रोक्ता देयमृणं त्वया । अप्रपन्नापि सा दाप्या धनं यद्याश्रितं स्त्रियाम् ॥ कात्या. 546, 547 q. by स्मृतिच. II. p. 176, व्य. प्र. pp. 273-274. In I. L. R. 1 Bom 121 at p. 124 Kāt. 546 is cited. In *Narotam v. Nanka* 6 Bom. 473 it was held that a married woman who contracted a debt jointly with her husband was liable to the extent of her *strīdhana* only and not personally.

764. धनस्त्रीहारिपुत्राणामृणभाग्यो धनं हरेत् । पुत्रोऽसतोः स्त्रीधनिनोः स्त्रीहारी धनिपुत्रयोः ॥ नारद IV. 23; पूर्वं दद्याद्धनग्राहः पुत्रस्तस्मादनन्तरम् । योषिद्ग्राहः सुताभावे पुत्रो वात्यन्तनिर्धनः ॥ कात्या. (577) q. by स्मृतिच. II. p. 172, व्य. प्र. p. 271; रिक्थहर्त्रा ऋणं देयं तदभावे च योषितः । पुत्रैश्च तदभावेऽन्यै रिक्थभाग्भिर्यथाक्रमम् ॥ कात्या. (562) q. by विश्वरूप on या. II. 47; विश्वरूप quotes a prose passage of बृहस्पति 'धनस्त्रीहारिपुत्राणां पूर्वाभावे यथोत्तरमाधमर्ण्यं तदभावे क्रमशोऽन्येषां रिक्थभाजाम्' ।, while later works like the स्मृतिच. II. p. 172 and व्य. प्र. p. 267 quote a verse of बृह. 'स्त्रीहारी च तथैव स्यादभावे धनहारिणः'. The वैजयन्ती on विष्णु. IV. 30 explains Yāj. II. 51 as अत्र पुत्रो विशेष्यः तस्यैतानि त्रीण्यपि विशेषणानि । तत्रानेकपुत्रसमवाये रिक्थग्राहः पुत्रः । तदभावे कृतदाराकृतदाराणां समवाये योषिद्ग्राहः ... । तदभावे अनन्याश्रितद्रव्यः । न विद्यन्ते अन्यं पुत्रदारादयो यस्य स अनन्यः पुत्रदारादिरहितः । न श्रितं द्रव्यं येनासौ अश्रितद्रव्य ... निर्धनो वा । अनन्यसहितः अश्रितद्रव्यः मध्यमपदलोपी समासः । तादृशः पुत्रः ऋणं दाप्यः'.

Whoever takes the wealth of the deceased (whether a son or a collateral heir) is primarily responsible to pay the debts of the deceased; but if the deceased died without leaving any property, then he who takes his wife has to pay the deceased's debts; if there be no wealth or taker of the deceased's widow, then the son even if he succeeds to no wealth has to pay. This liability may be said to be based on the equitable and moral principle that whoever takes the wealth of the deceased or his widow (over whom the deceased had a sort of dominion) was bound to pay his debts. There appears to be some conflict between the texts; but it is more apparent than real. Verses (like Kāt. 577) where the son is placed after the taker of wealth and before the taker of the widow refer to a son who has separate and independent wealth of his own and is more wealthy than the taker of the widow (though he himself being disqualified did not succeed to, ancestral wealth). When there is no wealth and there are several sons one of whom is congenitally blind or otherwise incompetent to succeed then the other sons are liable. From the fact that the taker of the widow is made liable for the debts of the first husband it should not be supposed that the ancient sages approved of widow-remarriage. On the contrary they condemned it (vide Manu V. 162), but, as the Mit. (on Yāj. II. 51) remarks, remarriages took place by custom among certain castes and nothing could prevent persons from taking widows as kept mistresses. Therefore as the wife was half of the husband (acc. to Vedic and other passages q. in H. of Dh. vol. II. pp. 428, 584 n.) she was practically the husband's wealth (Nār. IV. 22 expressly says so)[765] and so the taker of the widow was saddled with the obligation to pay the debts of the deceased. This sentiment continued to modern times and in the Bombay Presidency the Legislature had to declare (by Bombay Act VII of 1866, sec. 4) that ' no person who has married a widow shall merely by reason of such marriage, be liable for any of the debts of any prior husband of such widow '. The Vaijayanti on Viṣṇu Dh. S. VI. 30 quotes Yāj. II. 51 and Nār. IV. 23 and

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765. अधनस्य ह्यपुत्रस्य मृतस्योपैति यः स्त्रियम् । स आभजेदृणं वोढुः सैव तस्य धनं यतः ॥ नारद IV. 22 ; योषिद्ग्राहो यद्यपि शास्त्रविरोधेन न संभवति तथाप्यतिक्रान्तनिषेधः पूर्वपतिकृतर्णापाकरणाधिकारी भवत्येव । योषिद्ग्राहो यश्चतसृणां स्वैरिणीनामन्तिमां गृह्णाति यश्च पुनर्भुवां तिसृणां प्रथमाम् । मिता. on या. II. 51. Then नारद (स्त्रीपुंसयोग) verses 45-53 are quoted by the Mit.

explains them differently. According to it the word 'putra' (in Yāj. II. 51) is qualified by all the three adjectives viz. 'rikthagrāha', 'yoṣidgrāha' (one who is married) and 'ananyāśritadravya' (one who has no wife nor child and one who has taken no ancestral wealth, either because he does not desire it or because none exists). Therefore according to it among sons, the son that takes ancestral wealth has to pay the debts of the father, on failure of such a son when some of the sons are married and some are not, the married ones have to repay ancestral debts and lastly when there are no married sons the one that is wifeless, childless and also without wealth has to pay them.

Nikṣepa (deposit). The words *nikṣepa*, *upanidhi* and *nyāsa* are sometimes said to be synonyms (as done by Amara)[766], though several ancient works define them separately. According to Yāj. II. 65 *upanidhi* is the deposit of an article enclosed in a box or the like made with another without telling him of the contents of the box. Yāj. II. 67 holds nyāsa and nikṣepa to be different from upanidhi. Nārada[767] as quoted in the Mit. on Yāj. II. 65 defines upanidhi as the deposit of an article in a sealed receptacle without counting it in the presence of the person to whom it is entrusted and without telling him what the receptacle contains, while a nikṣepa is a deposit entrusted to a man after counting the articles in his presence. Manu VIII. 149 (=Vas. 16. 18), Kauṭ. III. 12 hold nikṣepa and upanidhi to be distinct. A verse quoted by Kṣīrasvāmin on Amara defines nyāsa as an open deposit and nikṣepa as the delivery of some goods to an artist or craftsman for being worked up or manufactured. Nār. (V. 1 and 5) defines nikṣepa as the deposit of one's articles with another through confidence, while upanidhi is defined in the same way as Yāj. II. 65. Viśvarūpa[768] defines nyāsa as an open deposit for safe custody and nikṣepa as delivery of one's article to another for handing over to a

766. पुमानुपनिधिर्न्यासः प्रतिदानं तदर्पणम् । अमरकोश; स्मार्ते त्वेषां भेदोस्ति । वासनस्थ ... न्यस्य यदर्पितम् । द्रव्यमुपनिधिर्न्यासः प्रकाश्य स्थापितं तु यत् । निक्षेपः शिल्पिहस्ते तु भाण्डं संस्कर्तुमर्पितम् । क्षीरस्वामी on अमरकोश.

767. यथाह नारदः । असंख्यातमविज्ञातं समुद्रं यन्निधीयते । तज्जानीयादुपनिधिं निक्षेपं गणितं विदुः । मिता. on या II. 65.

768. न्यासो निर्दिष्टस्वरूपं द्रव्यं यद्रक्षणार्थं समर्पितम् । निक्षेपोन्यहस्त एव यदन्यस्मै देयत्वेन निक्षिप्तम् । विश्वरूप on या. II. 69.

third. Kāt. (592) makes[769] *upanidhi* a generic term for all bailments such as a sold article remaining in the hands of the vendor, a deposit, a pledge, bailment to one for delivery to another, loan of article for temporary use, goods handed over for sale to an agent. The Mit. on Yāj. II. 67 defines nyāsa as handing over to some member in the house an article in the absence of the head of the house for delivery to the head of the house and nikṣepa as a deposit in the presence of the depositee himself. The V. P. p. 280 briefly distinguishes the three as noted below.[770]

Nikṣepa or *upanidhi* was a bailment made in trust and differed from an *ādhi* in this that the former was not given by way of security for a debt or for collecting interest but in confidence for safe custody.[771] Bṛ. (SBE vol. 33 p. 332 verse 2) says that such a deposit is made with another when one is leaving one's home, or through fear of the king or for depriving one's kinsmen.[772] Manu VIII. 179 (=Nār. V. 2) says that one should entrust a deposit to a person who is born of a good family, is well-conducted, knows *dharma*, speaks the truth, has a large family, is wealthy and straightforward. The person with whom a deposit is made generally receives no personal benefit from it ; hence the smṛtis (such as Bṛ. in SBE 33 p. 333 verses 6–8) extol the holder[773] of a deposit made in trust to be as meritorious as one who makes gifts of gold or other inferior

769. क्रयः प्रोषितनिक्षिप्तं बन्धान्वाहितयाचितम् । वैश्यवृत्त्यर्पितं चैव सोर्थस्तूपनिधिः स्मृतः ॥ कात्या. 592 q. by स्मृतिच. II. p. 3, अपरार्क p. 662, विवादचन्द्र (p. 27, reads क्रयः प्रेषितनिक्षेपो).

770. ग्राहकस्य समक्षं गणयित्वा स्थापितं निक्षेपः । गृहस्वामिनोऽसमक्षं गणितमगणितं वा तस्मिन्नागते एतद्दातव्यमित्युक्त्वान्यस्य तत्पुत्रादेर्हस्ते दत्तं न्यासः । मुद्राङ्कितं समक्षमगणितं स्थापितमुपनिधिरिति । व्य. प्र. p. 280.

771. पूर्वमुपचयापेक्षया परहस्ते दत्तमृणं तदनपेक्षया रक्षणार्थमेवान्यहस्ते द्रव्यमुपनिधिरिति ऋणादानानन्तरमुपनिधेरवसरः । स. वि. p. 265.

772. स्थानत्यागाद्राजभयाद् दायादानां च वञ्चनात् । स्वद्रव्यमर्प्यतेन्यस्य हस्ते निक्षेपमाह तम् ॥ बृह. q. by स्मृतिच. II. p. 178 ; राजचौरारातिभयाद्दायादानां च वञ्चनात् । स्थाप्यतेऽन्यगृहे द्रव्यं न्यासः स परिकीर्तितः ॥ बृह. as q. by व्य. प्र. p. 279.

773. ददतो यद्भवेत्पुण्यं हेमकुप्याम्बरादिकम् । तत्स्यात्पालयतो न्यासं तथैव शरणागतम् । भर्तृद्रोहे यथा नार्याः पुंसः पुत्रसुहृद्वधे । दोषो भवेत्तथा न्यासे भक्षितोपेक्षिते नृणाम् ॥ न्यासद्रव्यं न गृह्णीयात्सकाशस्त्वयशस्करः । गृहीतं पालयेद्यत्नात्सकृद्याचितमर्पयेत् ॥ बृह. q. by स्मृतिच. II. p. 178, परा. मा. III. p. 281, व्य. प्र. p. 281, अपरार्क p. 662 (first two only).

metals or clothes and condemn the misappropriation of a deposit or the losing of it through negligence as very sinful. The idea is that no one is bound to accept a deposit, but when a person accepts it, his primary duty is to preserve it with care and the next duty is to return it at the time agreed or on demand. The obligation arises from the trust reposed in a person. The rights of the bailee are limited as compared to those of the mortgagee or pledgee, but the very fact of his custody in trust clothes him with certain rights. The amount of care required of the depositee is the same as in the case of an *ādhi*, viz. he is to take the same care of it as he takes of his own goods and is not liable if the deposit is lost (along with his own property) through act of God or the king or is stolen by thieves (Manu VIII. 189, Yāj. II. 66, Nār. V. 9 and 12, Bṛ. in S.B.E. 33 p. 333, verse 10, Kāt. 593).[774] In the Mṛcchakaṭika Cārudatta accepts liability for the loss of the ornaments deposited with him by Vasantasenā, though they were stolen, because of his high sense of chivalry and of his idea that proper care was not taken by him or his friend. But Nār. V. 9 is careful to add that the loss through *vis major* or through theft must be real and not fraudulently brought about.[775] Nār. V. 6 and Bṛ. (in SBE 33 p. 334 verse 14) state that a deposit may be made in the presence of witnesses or without them, that it should be returned in the same way and condition in which it was made and that if there is a dispute, it may be settled by ordeal (when there are no witnesses).[776] The article deposited must be returned in the same condition (as regards seal &c.) in which it was handed over (Yāj. II. 65). It must also be returned to the man himself who made the deposit and not to his co-owners (Manu VIII. 185, Br. in SBE 33 p. 333 verse 9).[777] He is estopped

774. दैवराजोपघातेन यदि तन्नाशमाप्नुयात् । ग्रहीतृद्रव्यसहितं तत्र दोषो न विद्यते । बृह. q. by स्मृतिच. II. p. 179; निक्षिप्तं यस्य यत्किञ्चित् तत्प्रयत्नेन पालयेत् । दैवराजकृतादन्यो विनाशस्तस्य कीर्त्यते ॥ कात्या. q. by स्मृतिच. II. p. 179, व्य. प्र. p. 282.

775. ग्रहीतुः सह योऽर्थेन भ्रष्टो नष्टः स दायिनः । दैवराजकृते तद्वच्चेत्तज्जिह्मकारितम् ॥ नारद V. 9.

776. रहो दत्ते निधौ यत्र विसंवादः प्रजायते । विभावकं तत्र दिव्यमुभयोरपि च स्मृतम् ॥ बृह. q. by अपरार्क p. 664, व्य. प्र. p. 284.

777. स्थापितं येन विधिना येन यच्च यथाविधि । तथैव तस्य तद्देयं न देयं प्रत्यनन्तरे ॥ बृह. q. by स्मृतिच. II. p. 181, परा. मा. III. p. 281. 'स्थापकेतरस्य यस्य स्थापितद्रव्ये स्वाम्यमस्ति स इह प्रत्यनन्तर इत्युच्यते ।' स्मृतिच. II. p. 181. व्य. प्र. 286 remarks on मनु VIII. 186 'प्रत्यनन्तरबहुत्वे तु ... नैकस्मिन् प्रत्यनन्तरे देयम् । किं तु सर्वप्रत्यनन्तरसन्निधाविति न निक्षेप्तृबन्धुभिरभियोक्तव्य इत्यनेन सूचयांबभूव ।

from recognising the title of any one except the depositor, as in section 116 of the Indian Evidence Act. But if the bailor be dead the bailee can return it of his own accord without demand to the co-owners (Manu VIII. 186 = Nār. V. 10). In doing so however he must not return it to one of several heirs, but to all or in the presence of all. The loss of a deposit may be due to the fact that the bailee consumes it by using it, or to the bailee's negligence or to his ignorance. In these cases the bailee was made to reimburse the bailor for the loss. But Kāt. (597)[778] makes a difference, viz. when a bailee consumes the deposit by use he should be made to pay the price with interest, when he loses it through negligence he is to pay only the price (but without interest) and if he loses through ignorance, then he is to pay a little less (i. e. less by one-fourth) than the price. Vide Bṛ. (S B E vol. 33 p. 333 verse 11) and Nār. V. 8. If a bailor knowing the proposed bailee to be a careless man deposits his goods with him, the bailee is not liable even if the goods are lost from any cause whatever (Kāt. 599).[779] If immediately on demand by the depositor the bailee does not return the thing deposited or it is lost after demand from any cause whatever (including act of God or king), the bailee has to return the thing or the price of the thing (when lost) and also is liable to be fined by the king in the same amount (Yāj. II. 66, Nār. V. 7). If the bailee makes use of the article bailed without the permission of the bailor, he should be fined by the king and should be made to return the thing bailed with interest (Yāj. II. 67, Nār. V. 8). In the Rāj. T. (VIII. 124-157) occurs the story of a person who had deposited one *lakh* of *dīnāras* with a merchant and had withdrawn some money from time to time. It further states that, when the balance was demanded, the merchant furnished a statement of accounts giving a list of

778. न्यासादिकं परद्रव्यं प्रभक्षितमुपेक्षितम् । अज्ञाननाशितं चैव येन दाप्यः स एव तत् ॥ भक्षितं सोदयं दाप्यः समं दाप्य उपेक्षितम् । किंचिन्न्यूनं प्रदाप्यः स्याद्द्रव्यमज्ञाननाशितम् ॥ कात्या. 596-597, quoted by परा. मा. III. p. 283 (ascribes 597 to व्यास), व्य. मं. p. 282 (ascribes 597 to both कात्यायन and व्यास), मिता. on या II. 67 (597 only). बृह. q. by परा. मा. III. p. 283 and व्य. प्र. p. 282 has a similar verse भेदेनोपेक्षया न्यासं ग्रहीता यदि नाशयेत् । याच्यमानो न दद्याद्वा दाप्यं तत्सोदयं भवेत् ॥. 'किंचिन्न्यूनमिति चतुर्थांशहीनम्' मिता. Compare Sec. 161 of the Indian Contract Act.

779. ज्ञात्वा द्रव्यविधियोगं तु दाता यत्र विनिक्षिपेत् । सर्वोपायविनाशेऽपि ग्रहीता नैव दाप्यते ॥ कात्या. q. by स्मृतिच. II. p. 179, परा. मा. III. p. 283, वि. र. 89, व्य. प्र. p. 282.

fictitious items of withdrawals for many years with interest and showing that very little of the deposit was left. The king brought home the fraud to the merchant and ordered that the original deposit being used by the merchant should bear interest.

Kāt. (506) provides that when a deposit, a balance of interest, purchase price (not paid though the article be delivered to vendee), or sale price (article sold being retained by vendor though price is paid) is not returned or paid when demand is made, it carries interest at 5 per cent (from the date of demand).[780] Manu VIII. 191 (which is almost the same as Nār. V. 13) provides that where a bailee does not return the deposit though demanded or where a person without making a deposit claims it from a person, both are to be punished as a thief by the king and to be made to pay a fine equal in amount to the price of the bailed article (claimed). The deposit has to be taken back at the proper time by the depositor and the bailee has to avoid returning it at an improper time; if the latter returns at an improper time he should be made to pay a fine double of the value of the thing[781] (Kāt. 601).

Yāj. II. 67, Nār. V. 14, Bṛ.[782] (S. B. E. vol. 33 p. 334 verse 15) extend these rules about *nikṣepa* to other kinds of bailments viz. to *yācitaka* (an article such as an ornament borrowed from a man on a festive occasion), *anvāhita* (what is handed over to a third man and is the property of another and has been pledged with a man), nyāsa, upanidhi, *śilpinyāsa* (giving an article such as gold to an artisan like a goldsmith for preparing an ear-ring or the like), *pratinyāsa* (mutual deposit). Some of the rules about yācitaka are stated above

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780. निक्षेपं वृद्धिशेषं च क्रयं विक्रयमेव च । याच्यमाने न दद्याच्चेद्वर्धते पञ्चकं शतम् ॥ कात्या. q. by मिता. on या. II. 67, परा. मा. III. p. 224, वि. र. 15. 'यो मूल्यं गृहीत्वा विक्रीतमपि वस्त्रादि याचितं न ददाति क्रेता वा क्रीत्वा क्रयसाधनमूल्यं याचितं न ददाति स पञ्चकशतक्रमेण वृद्धिं दद्यादित्यर्थः' वि. र. p. 15.

781. ग्राह्यस्तूपनिधिः काले कालहीनं तु वर्जयेत् । कालहीनं ददद् दण्डं द्विगुणं च प्रदाप्यते ॥ कात्या. 601 q. by अपरार्क p. 663, स्मृतिच. II, p. 181, परा. मा III. p. 286, व्य. प्र. p. 285 which remarks (following Sm. C.). यदुभयादुपनिधिरन्यस्य हस्ते न्यस्तस्तद्भयातीते काले स ग्राह्य इत्यर्थः । तद्भयातीतेपि काले स्वयमेव नायाचितमर्पणीयम् । सकृद्याचितमर्पयेदिति बृहस्पतिस्मरणात् । तद्भये वर्तमाने स्वयमेवायाचितं दीयमानं कालहीनं तस्य दानं दोषश्चैवेति तद्दत्तोपि दण्डो युक्तः । Compare sec. 159–160 of the Indian Contract Act.

782. अन्वाहिते याचितके शिल्पिन्यासे सबन्धकं । एष एवोदितो धर्मस्तथा च शरणागते ॥ बृह. q. by स्मृतिच. II. p. 182, व्य. प्र. 287.

(pp. 426–427). Kauṭ.[783] III. 12 states that a *yācitaka* or *avakrīta* (lent on hire) article should be returned in the same condition in which it was received. If lost through act of God or king or through theft (after taking proper care) the depositee would not be liable. Kāt. (610) provides[784] that he who having taken the loan of an article for use does not deliver it even on demand should be restrained (by the owner) and forcibly made to return it and fined by the king if he does not return it; he should be made to pay the price with interest (if the thing be lost after demand). If the loan of an article was taken for a specified period or for a particular occasion or purpose and a demand for return be made in the middle and the article is not returned when demanded, the person taking the loan would not be made to pay the price: but if a person who has taken on loan an article does not return it after the period fixed has expired or the purpose is served, the borrower must offer to the owner the price if the article be destroyed or lost and if he does not return even after demand (when the period has ended) the borrower would have to pay the price with interest.

Kāt. (609) states a reasonable counter-exception to the rule in 606 viz. 'when the owner of an article borrowed by another is likely to sustain loss if the article borrowed were not returned on demand, then the borrower should be made to deliver it even though the time fixed has not ended or the purpose of the loan was only half fulfilled'.

There are some special rules about *śilpinyāsu* also. Kāt. (603–604) provides that if an artisan or craftsman retains an article delivered to him beyond the time that was settled (or

783. याचितकमवक्रीतकं वा यथाविधं गृह्णीयुस्तथाविधमेवार्पयेयुः । भ्रेषोपनिपाताभ्यां देशकालोपरोधि दत्तं नष्टं विनष्टं वा नाभ्याभवेयुः । शेषमुपनिधिना व्याख्यातम् । अर्थशास्त्र III. 12. On अन्वाहित there is difference between the digests. The मिता. defines 'यदेकस्य हस्ते निक्षिप्तं द्रव्यं तेनाप्यन्यु पश्चादन्यहस्ते स्वामिने देहीति निहितं तदन्वाहितम् ।' and is supported by कात्यायन (611 q. by वि. र. p. 84) 'अनुमार्गेण कार्येषु अन्यस्मिन्वचनान्मम । दद्यास्त्वमिति यो दत्तः स इहान्वाधिरुच्यते ॥.' The व्यवहारसार p. 144 quotes the very words of the मिता. स्मृतिच. II. p. 182 and व्य. प्र. p. 287 define अन्वाहित as 'स्वस्मिन् स्थितं परधनमन्यहस्ते कृतम्'. 'प्रतिन्यासस्य च परस्परप्रयोजनापेक्षया त्वयेदं मदीयं रक्षणीयं मयेदं त्वदीयं रक्ष्यते इति न्यस्तस्य ग्रहणम् ।' मिता. on या. II. 67.

784. यो याचितकमादाय न दद्यात्प्रतियाचितः । स निगृह्य बलाद्दाप्यो दण्ड्यश्च न ददाति यः ॥ कात्या. 610 q. by अपरार्क p. 664, स्मृतिच. II. p. 184, वि. र. p. 92. This shows that he could at once resort to the remedy of बल.

agreed) for finishing the work he should be made to pay (its price) even if the article was lost through act of God, but the artisan shall not be liable to pay the price if the article were to be lost through defects in the article itself; if (however) what is delivered for being worked or polished is destroyed through the fault of the artisan he should be made to pay the price[785].

From the fact that Kāt. 596 (quoted above in n. 778) employs the expression '*dāpyaḥ sa eva tat*' (he alone who misappropriates or causes loss of a deposit by negligence), the words of Gaut. XII. 39 (quoted above under *ādhi*) and the fact that nikṣepa is a title distinct from *ṛṇādāna* (under which alone the liability of sons, grandsons, and great-grandsons is expressly declared) it follows that sons are not liable for the misappropriation or loss of a deposit or article bailed to their father or other ancestor provided they have not themselves joined or helped in the embezzlement or loss. This is made clear by Haradatta on Gaut. XII. 39, the Vivādacintāmaṇi and the Vivādacandra quoted below[786].

It is interesting to note that Nār.[787] V. 15 places on the same level (as to liability for loss) with the depositee and the like the man who takes in his charge a minor that has a good deal of wealth i. e. the person undertaking the position of the guardian of a minor's property has to take as much care of it as of his own and is liable in the same circumstances as a

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785. यैश्च संस्क्रियते न्यासो दिवसैः परिनिश्चितैः । तदूर्ध्वं स्थापयेच्छिल्पी दाप्यो दैवहतोपि तत् ॥ न्यासदोषाद्विनाशः स्याच्छिल्पिनं तत्र दापयेत् । दापयेच्छिल्पिदोषात्तत्संस्कारार्थं यदर्पितम् । कात्या. 603–604 q. by स्मृतिच. II. p. 183, परा. मा. III. p. 288, वि. र. p. 98. The example of 604 given in Sm. C. and others is old clothes delivered to a washerman and torn in the process of cleaning. Compare Sec. 161 of the Contract Act with verse 604.

786. न केवलं पुत्रानेव नाभ्याभवेयुः किं तर्हि येषां सकाशे निध्यादयः कृतास्तानपि नाभ्याभवन्ति । हरदत्त on गौ. XII. 39; कात्यायनः । न्यासादिक ... दाप्यः स एव तत् । एवकारेण त्वपराधामन्तर्गततत्पुत्रादिव्यवच्छेदः । तथा च नाभ्याभवेयुरित्यधिकारे गौतमः निध्यन्व ... राधेन । सर्वान्पुत्रादीन्निरपराधान् । वि. चि. p. 26; पितृपरोक्षे तु तद्गृहीतो न्यासः पुत्रादिना न देयः । ऋणातिरिक्तर्णत्वादिति नष्टातिरिक्तमातिभाव्यातिरिक्तानां बलात्कारगृहीतानामुक्तानां सर्वेषामन्यदेयत्वेनान्येन दानेऽतिप्रसङ्गात् । ऋणादिवद्विशेषवचनाभावाच्च । विवादचन्द्र p. 27.

787. प्रतिगृह्णाति पौगण्डं यश्च सप्रधनं नरः । तस्याप्येष भवेद्धर्मः षडेते विधयः समाः ॥ नारद V. 15. नारद IV. 35 defines पौगण्ड as a synonym of बाल (a minor up to the 16th year) 'बाल आ षोडशाद्वर्षात्पौगण्ड इति शस्यते'. Gaut. XII. 34 and मनु VIII. 148 employ the word.

depositee would be for loss of the minor's property. Vide section 27 of the Guardian and Wards Act (VIII of 1890) for the care required of a guardian[788].

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788. The British India Courts have been very much exercised over the question of the liability of ancestral property in the hands of the son for the obligations incurred by the father by his misconduct or embezzlement either as agent or manager for another or as guardian of a minor's property. It would follow from the passages quoted in n. 786 that ancestral property in the hands of the sons is not liable, acc. to some of our digests, if the father used or lost a deposit or loaned article by his negligence or mismanaged a minor's property. It is firmly established that the son is not liable for a debt incurred by the father in circumstances which would render the father liable to a criminal prosecution. Vide *Toshanpal Singh v. District Judge of Agra* 61 I. A. 350. In the latest case on the point, *Govindprasad v. Raghunathprasad* 41 Bom. L. R. 589 (F. B.) the exemption is carried further and it is recognized that as to the exemption of the son for '*avyāvahārika*' debts of the father, there are many cases which cannot be reconciled, that it is repugnant to good sense to construe ancient texts in the light of a system of criminal Jurisprudence developed long after and that the correct rule is to hold that 'the son can claim immunity when he proves that the debt of the father was of a character which was illegal, dishonest or immoral (p. 602)' though difficult cases may arise in the application of this rule. It would be far beyond the scope of this work to cite or discuss the other numerous decisions.

CHAPTER XVII

ASVĀMIVIKRAYA (sale by one not the owner).

The different modes of the sources of ownership have already been referred to (H. of Dh. vol. II. pp. 130 ff) and will be referred to again under *dāyabhāga*. According to Nār. VII. 1 and Bṛ. (SBE vol. 33 p. 335 verse 2) when[789] a person, who holds an open deposit, a sealed deposit, an article bailed for delivery to another, stolen property, an article borrowed for some festival, a pledge, or property lost by a stranger and found (by him), sells it in secret (or behind the back of the owner) it is to be considered as a sale by one who is not the rightful owner. Vyāsa has a similar verse. The word 'sells' is only illustrative and includes gifts and pledges. Similarly as most sales by one not the owner are clandestinely brought about, Bṛ. employs the words 'in secret' but even if the sale is effected openly the same consequences may follow. The same rules will apply to an article lost by the owner and found by a stranger. Kāt. (612) provides[790] that a sale, gift, or pledge, made by one who is not the owner, should be rescinded (by the king or judge), Manu VIII. 199 and Nār. (q. by Sm. C. II. p. 213, V. P. p. 291) and others say the same thing. Yāj. II. 168, Nār. VII. 2 provide that the owner is entitled to recover his property from the person that purchases from one who is not the owner. If the buyer purchases an article not in the open market, then he is liable for punishment; if he purchases from one who could have no means of possessing the thing sold (such as a slave without the master's consent) or for a very inadequate price or at a very unusual hour (at midnight or

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789. निक्षिप्तं वा परद्रव्यं नष्टं लब्ध्वापहृत्य वा। विक्रीयतेऽसमक्षं यद्विज्ञेयोऽस्वामिविक्रयः॥ नारद VII. 1; निक्षेपान्वाहितन्यासहृतयाचितबन्धकम्। उपांशु येन विक्रीतमस्वामी सोऽभिधीयते॥ बृह. q. by स्मृतिच. II p. 213 व्य. म. p. 290; याचितान्वाहितन्यासं हृत्वा चान्यस्य यद्धनम्। विक्रीयते स्वाम्यभावे स ज्ञेयोऽस्वामिविक्रयः। व्यास q. by व्य. म. p. 195, व्य. प्र. p. 290.

790. अस्वामिविक्रयं दानमाधिं च विनिवर्तयेत्। कात्या. 612 q. by the मिता. on या. II. 168, परा. मा. p. 291, वि. र. p. 104. The व्य. म. p. 291 takes अस्वामिविक्रयं as one word 'अस्वामिना कृतं विक्रयम्। अस्वामिकृतत्वं दानाधयोरपि तत्साहचर्यात्'; while व्य. म. p. 195 says अस्वामि is a separate word and an adverb. The latter had to explain in this way in order to directly connect the absence of ownership with all the three kinds of transactions.

the like) or from bad characters then he is to be punished as a thief (Yāj. II. 168, Viṣṇu Dh. S. V. 166, Nār. VII. 3, Manu VIII. 202, Bṛ. in SBE vol. 33 p. 336 verse 11). Such a sale is a fraudulent one. If the buyer purchases (through ignorance) in market overt from one who is not the owner, he incurs no blame (no punishment), but he may have to hand over the article to the real owner (Viṣṇu Dh. S. V 164–166).[791] The purchaser from one not the real owner can free himself by producing the vendor (called *mūla* in Manu VIII. 202, Bṛ. and Kāt.) and should not attempt to conceal from whom he came by the thing, otherwise he would be liable to be punished equally with the vendor as a thief (Nār. VII. 4). Bṛ. (SBE 33 p. 335 verse 3), Manu VIII. 201 and Yāj. II. 170 say that when the vendor has been produced by the vendee, then the latter is not to be proceeded against, but the vendor has to litigate with the real owner who has lost his property and when the vendor loses the suit he has to pay the price to the buyer and a fine to the king and the owner gets his property back.[792] If the vendor has gone abroad adequate time should be granted to the purchaser to produce him (Kāt. 615). The purchaser in order to escape blame (punishment) has to produce the vendor and if that cannot be done owing to the vendor's absence he has to prove that he purchased[793] openly (Bṛ. in SBE 33 p. 335 v. 4, Manu VIII. 202, Kāt. 615, 618–619). If he cannot do any of these two, then the purchaser would be liable to pay the price to the real owner as claimed and a fine to the king. Manu VIII. 198 prescribes that one who sells without being the owner but being a member of the owner's family should be fined 600 paṇas, while a vendor unconnected with the real owner's family should be dealt with as a thief. The same rule applies to a

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791. अजानानः प्रकाशं यः परद्रव्यं क्रीणीयात् तत्र तस्यादोषः । स्वामी द्रव्यमाप्नुयात् । यस्त्वप्रकाशं हीनमूल्यं च क्रीणीयात्तदा क्रेता विक्रेता च चोरवच्छास्यौ । विष्णुधर्मसूत्र V. 164–166; अन्तर्गृहे बहिर्ग्रामान्निशायामसतो जनात् । हीनमूल्यं च यत्क्रीतं ज्ञेयासावुपधिक्रयः ॥ बृह. q. by व्य. प्र. p. 291, वि. र. 107, परा. मा. III. 293.

792. मूले समाहृते क्रेता नाभियोज्यः कथंचन । मूलेन सह वादस्तु नाष्टिकस्य विधीयते ॥ बृह. q. by मिता. on या II. 170, while परा. मा. III. 295 and स्मृतिच. II. p. 215 attribute it to व्यास. विक्रेता दर्शितो यत्र हीयते व्यवहारतः । क्रेत्रे राज्ञे मूल्यदण्डौ प्रदद्यात्स्वामिने धनम् ॥ बृह. q. by परा. मा. III. p. 295, स्मृतिच. II. p. 215.

793. प्रकाशं वा क्रयं कुर्यान्मूलं वापि समर्पयेत् । मूलानयनकालस्तु देयो योजनसंख्यया ॥ कात्या. q. by मिता. on या. II. 170 (reads देयस्तत्राध्वसंख्यया), अपरार्क p. 776, वि. र. p. 101 ; असमाहार्यमूलस्तु क्रयमेव विशोधयेत् । विशोधिते क्रये राज्ञा न वक्तव्यः स किंचन ॥ अनुपस्थापयन्मूलं क्रयं वाप्यविशोधयन् । यथाभियोगं धनिने धनं दाप्यो दमं च सः ॥ कात्या. 618–619 q. by मिता. on या. II. 170, वि. र. pp. 106, 108, व्य. म. pp. 196–197.

vendor selling another's article through ignorance or mistake and one doing so with full knowledge. The person who has lost a chattel and claims it from the finder is described as *nāṣṭika*[794] in Kauṭ. III. 16, Manu VIII. 202, Kāt. (614) and elsewhere, the word being derived from *naṣṭa* (what is lost). The idea is that openly purchasing an article in the presence of a number of people for an adequate price negatives fraudulent intent and leads to the inference of a purchase in good faith and such a purchaser even though he may have to part with the chattel to the real owner when the latter proves his title, incurs no blame and is entitled to recover from the vendor, if he has to surrender the article, the price paid by him. When a person claims a lost article as his he has first to prove his title and possession by evidence (such as that of his kinsmen or a document &c.) and that he had not sold or donated or abandoned it;[795] after he has proved his title the purchaser is called upon to prove his purchase as honest by evidence i. e. by producing the vendor or by showing that he purchased openly and for adequate price (Kāt. 613, Yāj. II. 170). When this is done the purchaser escapes blame but has to surrender the article to the true owner. Kāt. (616) adds[796] that in the case of 'asvāmi-vikraya' no other means of proof whether divine or human (except the evidence of witnesses such as kinsmen) is declared to be proper. Acc. to the V. P. p. 293 other evidence and even ordeals may be admissible in sale without ownership, but the Sm. C. p. 216 and the Madanaratna say that on account of the express words of Kāt. this is not possible. If the owner who alleges the loss of an article fails to prove his title and prior possession he has to pay a fine to the king equal to ⅛th of the price of the article. Kāt. (620) and Kauṭ. (III. 16) state that on failure to prove his title the person claiming[797] the article as his should be fined as a thief, in order to deter (others) from taking undue advantage (i. e. preferring false claims). Kauṭ.[798] III. 16 and Yāj. II. 169

794. नष्टमन्वेषते नाष्टिकः। नष्टमस्यास्तीत्येवं ठनि कृते प्रज्ञादित्वात्स्वार्थिकोऽण् कर्तव्यः। नष्टं प्रयोजनमस्येति वा। मेधा॰ on मनु VIII. 202. The sūtras referred to are पाणिनि V. 2. 115, V. 4. 38 and V. 1. 109.

795. नाष्टिकस्तु प्रकुर्वीत तद्धनं ज्ञातृभिः स्वकम्। अदत्तत्यक्तविक्रीतं कृत्वा स्वं लभते धनम्। कात्या 614 q. by अपरार्क p. 777, व्य. र. p. 104. स. वि. p. 306.

796. प्रकाशं च क्रयं कुर्यात्साधुभिर्ज्ञातिभिः स्वकैः। न तत्रान्या क्रिया प्रोक्ता दैविकी न च मानुषी॥ कात्या. 616 q. by अपरार्क p. 717, परा. मा. 296, वि. र. p. 106.

797. यदि स्वं नैव कुरुते ज्ञातिभिर्नाष्टिको धनम्। प्रसङ्गविनिवृत्त्यर्थं चोरवद्दण्डमर्हति॥ कात्या. 620 q. by अपरार्क p. 777, वि. र. p. 105, परा. मा. III. p. 297.

798. नष्टापहृतमासाद्य स्वामी धर्मस्थेन ग्राहयेत्। देशकालातिपत्तौ वा स्वयं गृहीत्वोपहरेत्। अर्थशास्त्र III. 16.

provide that when the real owner finds his lost article in the hands of a stranger he should get him apprehended by the royal officers (such as *chauroddharaṇika*, acc. to Mit.), but that if the owner thinks that much time will be lost or distance will have to be traversed (for going to officers) he should himself seize the person and bring him before the court. The Mit. explains that the buyer should have the seller arrested and, if the seller is dead or gone abroad, that he should hand over the article to the real owner. Where a purchase has been made in the midst of a row of traders to the knowledge of the king's officers, but from a vendor whose habitation was unknown or where (after the purchase) the vendor dies, the real owner (of the thing sold by one not the owner) will recover his own property after paying half the price to the purchaser, since the rule of justice in such a case so requires, because to purchase from one (whose habitation is) not known is a fault (in the purchaser) and not taking proper care (of one's goods) is also a fault in the real owner (Bṛ. in S. B. E. vol. 33 pp. 335-36 verses 7-9 or Kāt. 621-623)[799]. Marīci (q. by Aparārka p. 775, Sm. C. II. p. 217) has similar provisions. Bṛ. (S. B. E. vol. 33 p. 335 verse[800] 6) provides that in a suit where there is no evidence the king shall take into consideration the character of the litigants and give a decision according as the credibility of the parties is equal, greater or less.

As regards articles lost and found by the king's officers, vide above (pp. 175-176).

799. वणिग्वीथीपरिगतं विज्ञातं राजपूरुषैः। अविज्ञाताश्रयात् क्रीतं विक्रेता यत्र वा मृतः। स्वामी दत्त्वार्धमूल्यं तु प्रगृह्णीत स्वकं धनम्। अर्धं द्वयोरपहृतं तत्र स्याद्व्यवहारतः॥ अविज्ञातक्रयो दोषस्तथा चापरिपालनम्। एतद् द्वयं समाख्यातं द्रव्यहानिकरं बुधैः॥ बृह., acc. to अपरार्क p. 775, कुल्लूक on मनु. VIII. 202 (the first two only); and कात्या. acc. to स्मृतिच. II. pp. 216-217, परा. मा. III. pp. 297 and 300, व्य. प्र. pp. 295-296. Law helps the vigilant. The rules under 'asvāmivikraya' are based on the doctrine that no one can confer a better title to the goods sold than he himself has (vide section 27 of the Indian Sale of Goods Act IX of 1930). The verses recognise an exception in cases where both purchaser and the real owner are equally at fault.

800. प्रमाणहीनवादे तु पुरुषापेक्षया नृपः। समन्यूनाधिकत्वेन स्वयं कुर्याद्विनिर्णयम्॥ बृह. q. by स्मृतिच II. p. 216, वि. र. p. 108.

CHAPTER XVIII

SAMBHŪYA-SAMUTTHĀNA[801]

(A joint undertaking, partnership).

Where traders or others (like actors, musicians or artisans) carry on a business jointly it is termed a partnership (Nār. VI. 1 and Kāt. 624).[802] Bṛ. (SBE vol. 33 p. 336 verses 1–2) says that a man should carry on a joint business with other persons of good family, that are clever, active, intelligent (or educated), familiar with coins, skilled in (controlling) expenditure and income, honest and valiant (or enterprising) and that joint undertakings like trade should not be carried on by prudent men with persons (partners) who are weak or lazy or afflicted with disease or are unlucky or destitute (of money).[803] The meaning is not that all the above qualities must exist in all partners, but that according to the nature of the undertaking some of these qualities will be absolutely necessary. Nār. VI. 2–3, Yāj. II. 259, Bṛ. (SBE vol. 33 pp. 336–337 verses 3 and 4) prescribe that the expenses, loss, profit or work of those who jointly lend gold, grain or liquids shall be according to the capital put in by each.[804] The duty of each is to act honestly towards the others, whether they are present or absent,

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801. सम्भूय is the indeclinable past participle of the root भू with सम् and means 'having formed together or come together' and समुत्थान means 'undertaking'. So the two words mean 'undertaking in which are joined together' (labour, capital or both).

802. समवेतास्तु ये केचिच्छिल्पिनो वाणिजोऽपि वा । अविभज्य पृथग्भूतैः प्राप्तं तत्र फलं समम् ॥ कात्या 624 q. by अपरार्क p. 832, परा. मा. III. p. 304.

803. कुलीनदक्षानलसैः प्राज्ञैर्नाणकवेदिभिः । आयव्ययज्ञैः शुचिभिः शूरैः कुर्यात्सहक्रियाम् ॥ अशक्तालसरोगार्तमन्दभाग्यनिराश्रयैः । वाणिज्याद्या सहैतैस्तु न कर्तव्या बुधैः क्रिया ॥ बृह. q. by स्मृतिच. II. p. 184, अपरार्क pp. 831–832. 'सहक्रियां वाणिज्यकृषिशिल्पक्रतुसंगीतस्तैन्यात्मिकामित्यर्थः । तत्र वाणिज्यक्रिया नाणकवेदिभिरायव्ययज्ञैः सम्भूय कार्या । कृषिक्रिया तु आयव्ययज्ञैः । शिल्पक्रिया संगीतक्रिया च प्राज्ञैः ।' स्मृतिच. II. p. 184.

804. प्रयोगं कुर्वते ये तु हेमधान्यरसादिना । समन्यूनाधिकैरंशैर्लाभस्तेषां तथाविधः ॥ समो न्यूनोऽधिको वांशो येन क्षिप्तस्तथैव सः । व्ययं दद्यात्कर्म कुर्याल्लाभं गृह्णीत चैव हि ॥ बृह. q. by. स्मृतिच II. p. 185, व्य. प्र. p. 298. अपरार्क p. 832 ascribes the first to कात्यायन.

in sales or purchases of various commodities.[805] Br. (SBE vol. 33 p. 337 verses 5–7) provides that whatever[806] property one partner may give (or transfer), being authorised to do so by the rest, or whatever document (or transaction) he may cause to be executed, all that is to be deemed as done by all partners; the partners themselves are declared to be the judges (the deciding persons) or witnesses among themselves in a doubtful case and in case of fraud, provided they are not already at feud among themselves. It follows from this that by entering into an agreement of partnership, each partner agrees that he submits to the decision of the other partners in cases of doubt. If any one from them is found out to have practised fraud on the others in sales or purchases he should clear himself by special oaths or ordeals. Yāj. II. 260, Nār. VI. 5,[807] Bṛ. (SBE vol. 33 p. 337 verse 9) provide that each partner is responsible to make good what has been lost through his negligence or in consequence of his acting against the instructions of the others or of his acting without their authority or consent. If any one of the partners saves partnership property from act of God or the king or thieves (or similar calamity) by his own exertions he is to be awarded (as his special share) one tenth of the property saved (Yāj. II. 260, Kāt. 631,[808] Nār. VI. 6). If any partner is crooked or fraudulent the rest may expel him without giving him any profit; a partner who is incompetent to work (personally) should get the partnership business done through another (Yāj. II. 265). Yāj. II. 264 and Nār. VI. 7 and 17–18 state that if one partner

805. समक्षमसमक्षं वाऽवञ्चयन्तः परस्परम् । नानापण्यानुसारात्ते प्रकुर्युः क्रयविक्रयौ ॥ व्यास q. by स्मृतिच. II. p. 185, अपरार्क p. 832. Compare sec. 9 of the Indian Partnership Act (IX of 1932) about the duty to be just and faithful.

806. बहूनां संमतो यस्तु दद्यादेको धनं नरः । करणं कारयेद्वापि सर्वैरेव कृतं भवेत् ॥ परीक्षकाः साक्षिणस्तु त एवोक्ताः परस्परम् । सन्दिग्धेऽर्थे वञ्चनायां न चेद्विद्वेषसंयुताः ॥ यः कश्चिद्वञ्चकस्तेषां विज्ञातः क्रयविक्रये । शपथैः सोपि शोध्यः स्यात् सर्ववादेष्वयं विधिः ॥ बृह. q. by व्य. म. p. 200, वि. र. pp. 113, 123, व्य. प्र. p. 299; अपरार्क p. 832 has all these, ascribes the first to कात्या. and reads ऋणं च कारये०. What is meant is that when one partner raises an objection they have to decide what is to be done by a majority (and so they are judges in their business). Vide sections 12 and 18 of the Indian Partnership Act as to the decision by the view of majority and as to agency of partners.

807. प्रमादान्नाशितं दाप्यः प्रतिषिद्धकृतं च यत् । असन्दिष्टश्च यत्कुर्यात्सर्वसम्भूयकारिभिः ॥ नारद VI. 5.

808. चोरतः सलिलादग्नेर्द्रव्यं यस्तु समाहरेत् । तस्यांशो दशमो देयः सर्वद्रव्येष्वयं विधिः ॥ कात्या. 631 q. by परा. मा. III. 305, वि. र. p. 114.

goes to a foreign country and dies, his share should be taken by his heirs (son &c.) or by his agnates or cognates ; in default of those the other partners may take it and in default of them the king may take it after waiting for ten years to see whether any heir or claimant turns up. Kātyāyana[809] states that in the case of artisans who together carry out some work, those among them who are directors of new methods get four shares, those who are adepts in the craft three shares, those who have studied the craft two shares and the apprentices only one share. Whatever is given to strangers by all together (i. e. by the partnership firm) should be claimed back by the firm as such ; any single partner should not claim it ; if he does so he will lose his share of the profit[810]. Some rules are prescribed by Bṛ. that among dancers, singers and musicians, the singers get equal shares ; while those who beat the tune only get half share each ; similarly in the joint construction of a mansion or a temple the head of the artisans gets two shares. An artisan[811] (*śilpin*) is one who manufactures or works upon gold, silver, yarn, wood, stone and hides or one who has mastered one of the (64) arts. If a king has ordered a band of adventurers from among his subjects to make a plundering expedition in enemy country, Bṛ. (in V. R. p. 125) and Kāt. (633–635)[812] prescribe that the king gets one tenth ($\frac{1}{6}$ acc. to Bṛ.), the leader gets four shares in the remainder, the valiant among his followers three shares, the more capable two shares and the rest one each and that if any one of them is caught the money for his ransom should be contributed by all according to their shares. When no agreement is made as to shares in property by traders, husbandmen, thieves and artisans similar rules apply[813].

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809. शिष्यकाभिज्ञकुशला आचार्याश्चेति शिल्पिनः । एकद्वित्रिचतुर्भागान्हरेयुस्ते यथोत्तरम् ॥ कात्या. 632, q. by व्य. म. p. 201, अपरार्क p. 838, वि. र. p. 124.

810. समवेतैस्तु यद्दत्तं प्रार्थनीयं तथैव तत् । न याचेत च यः कश्चिल्लाभात्स परिहीयते ॥ बृह. q. by अपरार्क p. 833, वि. र. p. 123, व्य. प्र. p. 300.

811. हिरण्यरूप्यसूत्राणां काष्ठपाषाणचर्मणाम् । संस्कर्ता च कलाभिज्ञः शिल्पी चोक्तो मनीषिभिः ॥ बृह. q. by वि. र. p. 124, व्य. प्र. p. 304 (reads हिरण्यकुप्य॰)

812. परराष्ट्राद्धनं यत्स्याच्चौरैः स्वाम्याज्ञया हृतम् । राज्ञो दशांशमुद्धृत्य विभजेरन्यथाविधि । चोराणां मुख्यभूतस्तु चतुरोंशांस्ततो हरेत् । शूरोंशांस्त्रीन्समर्थो द्वौ शेषास्त्वेकैकमेव वा ॥ तेषां चेत्प्रसृतानां यो ग्रहणं समवाप्नुयात् । तन्मोक्षणार्थं यद्दत्तं वहेयुस्ते यथांशतः ॥ कात्या. q. by स्मृतिच. II. p. 189, व्यव. नि. p. 286, परा. मा. III. 311, व्य. प्र. p. 305.

813. वणिजां कर्षकाणां च चोराणां शिल्पिनां तथा । अनियम्यांशकर्तॄणां सर्वेषामेष निर्णयः ॥ कात्या. q. by व्य. प्र. p. 305, परा. मा. III. p. 312, वि. र. p. 126.

It is interesting to note that the ancient Dharmasūtras of Gautama, Āpastamba and Baudhāyana are silent about partnerships, that Manu (VIII. 206–210) lays down rules about the distribution of fees among the priests at a sacrifice and that in one verse (VIII. 211) he remarks that the same principles are to be applied in all matters where men work conjointly (i. e. each is to be paid according to the importance and volume of the work he does). The rules about sacrificial priests in Manu are: If a priest chosen to do work in a sacrifice abandons his work a share only of the fee in proportion to the work (done) shall be given to him by those conjointly working with him; if a priest leaves after the fees are distributed (as at the time of midday extraction of Soma in the great sacrifices like Jyotiṣṭoma) then he keeps the whole of it and shall cause the remaining work to be performed by another (who will be paid by the sacrificer, acc. to Medhātithi). When specific fees are prescribed to be paid to individual priests at the performance of the several parts in a complicated sacrifice, the individual priests are to receive them and all are not to participate; as for example, the adhvaryu takes the chariot, the brahmā priest takes the horse in Agnyādhāna, the hotṛ also takes the horse and the udgātṛ the cart used in purchasing the soma plant. The four chief priests are entitled to one half of the fees, the first group of their assistants will get half of what the chief ones get, the 2nd group ⅓ and the fourth ¼. Nār. VI. 10 and Bṛ. (in V. R. p. 120) state that sacrificial priests are of three kinds viz. one hereditary and honoured by the ancestors of the sacrificer, one appointed by the sacrificer himself and one who performs the functions of his own accord through friendship and that (VI. 9 and 11) if an officiating priest forsakes a sacrificer who is free from any fault and who has caused no harm or if a sacrificer abandons a priest who is faultless, they both shall be punished but this does not apply to the third kind of priest. Śaṅkha-Likhita, as quoted in V. R. pp. 117 and 120–121 and Sm. C. II. p. 188, give elaborate rules about sacrificial priests dying or leaving work and the fines to be imposed on them. Kauṭ. III. 14 lays down rules for the receipt of fees by priests when they leave off at different stages of such solemn sacrifices as the Agniṣṭoma and also when the sacrificer dies without completing the sacrifice. The Vy. Nir. (pp. 284–285) quotes a few sentences from Kauṭ. III. 14.

The above shows that in the times of the ancient sūtras, secular partnerships had not attained sufficient importance and

even in the times of the Manusmṛti almost the same was the case. While Manu extends the rule about the distribution of fees at a sacrifice[814] to secular joint undertakings, Yāj. (II. 265) extends the general rules about the partnerships of traders to sacrificial priests, husbandmen, craftsmen (like carpenters, dancers &c.). That shows that complicated sacrifices requiring a large number of priests had become rare in Yājñavalkya's days and partnerships of traders and artisans had assumed great importance.

814. In solemn sacrifices like the ज्योतिष्टोम there are four principal priests (होतृ, अध्वर्यु, उद्गातृ, ब्रह्मन्) and each of the four has three assistants. If 100 cows in all are to be distributed as *dakṣiṇā* the four principal priests get 48 in all (i. e. 12 each), the first group of four assistants called 'ardhinaḥ' in the Vedic passages to be quoted below and in Manu VIII. 210 (viz. मैत्रावरुण, प्रतिप्रस्थातृ, ब्राह्मणाच्छंसिन्, प्रस्तोतृ) receive one-half of 48 (i. e. 24, 6 for each), the next group of four called 'one-thirders' (तृतीयिनः) in both get 16 (4 to each of अच्छावाक, नेष्टृ अग्नीध्र, प्रतिहर्तृ), the last group of four called 'one-fourth holders' (पादिनः) get 12 in all (3 to each of ग्रावस्तुत्, उन्नेतृ, पोतृ, सुब्रह्मण्य). Vide Mit. on Yāj. II. 265, Kullūka on Manu. VIII. 210, V. R. p. 119, V. P. p. 301. The कात्यायनश्रौत X. 2. 25 says 'यथारम्भं द्वादश द्वादशाद्येभ्यः षड्षड्द्वितीयेभ्यश्चतस्रश्चतस्रस्तृतीयेभ्यस्तिस्रस्तिस्र इतरेभ्यः ।'. The question of distribution is agitated in Jai. X. 3. 53–55, the prima facie (pūrvapakṣa) view being that the cows should be equally divided among all the priests or according to the work done, while the conclusion is that since the śruti employs the words अर्धिनः, तृतीयिनः and पादिनः as if it was a well-known matter (*anuvāda*), the cows are to be distributed as in Kāt. Ś. sūtra above. The Vedic passage is अध्वर्युर्गृहपतिं दीक्षयित्वा ब्रह्माणं दीक्षयति तत उद्गातारं ततो होतारम् । ततस्तं प्रतिप्रस्थाता दीक्षयित्वाऽर्धिनो दीक्षयति । ... ततस्तं नेष्टा दीक्षयित्वा तृतीयिनो दीक्षयति । ... ततस्तमुन्नेता दीक्षयित्वा पादिनो दीक्षयति ।

CHAPTER XIX

DATTĀNAPAKARMA (resumption of gift).

This title is also called *dattāpradānika*[815] (lit. that which is concerned with the non-delivery or resumption of a gift). Nār. VII. 1 defines it as that title where a man desires to resume what has been given by him because it has been improperly (in a manner opposed to law) given by him. Nār. (VII. 2) divides this title into four topics viz. what may not be given, what may be given, what are valid gifts and what are invalid gifts. Nār. VII. 3-5 and Bṛ. (SBE vol. 33 p. 342 verse 2) state that there are eight things that cannot be given (*adeya*) viz. an *anvāhita*, a deposit, *yācitaka*, a pledge, property jointly owned with others, a deposit, son and wife, the entire property in the case of one who has offspring, and what has been already promised to another. Vide Kauṭ. III. 16, Yāj. II. 175[816] for a similar but more compendious statement, and Kāt. 638. These cannot be given either because they are not one's absolute property or because the gift of them is forbidden by the sages. In the case of even those who hold that one has ownership over one's son or wife, the gift of them is not possible because it is forbidden, just as though one owns rice, *yavas* and *māṣa* beans, one cannot make offerings of māṣa because the veda prohibits their use in the words 'ayajñiyā vai māṣāḥ' (q. by Śabara on Jai. VI. 3. 20). So son and wife cannot be given on account of the prohibition in the smṛtis. The general rule of what may be given is stated

815. मेधातिथि on मनु. VIII. 214 explains it as अपक्रिया क्रियापायः तस्य तत्राप्रतिषेधः । दानमेवं न चलितं भवति । एवैव दाने स्थितिरिति यावत् । कथं प्रतिश्रुत्यादीयमाने धर्मो न नश्यतीति नैषा शङ्का कर्तव्या । एष एवात्र धर्मो यत्र दीयते दत्तं च प्रत्यादीयते ।. So acc. to this दत्तस्यानपाकर्म means 'not improper abstraction of what is given or promised to be given.' The मिता. on या. II. 175 explains both दत्ताप्रदानिक and दत्तानपाकर्म as follows : दत्तस्य अप्रदानं पुनर्हरणं यस्मिन्दानाख्ये तद् दत्ताप्रदानिकं नाम व्यवहारपदम् । ... दत्तस्य अनपाकर्म अपुनरादानं यत्र दानाख्ये विवादपदे तद्दत्तानपाकर्म. Acc. to this दत्तानपाकर्म means 'that in which what is donated cannot be taken back because the gift is according to law' (also impliedly the converse of it).

816. सर्वस्वं पुत्रदारमात्मानं प्रदायानुशयिनः प्रयच्छेत । अर्थशास्त्र III. 16. सामान्यपुत्रदाराधिसर्वस्वन्यासयाचितम् । प्रतिश्रुतं तथान्यस्येत्यदेयं त्वष्टधा स्मृतम् ॥ बृह. q. by स्मृतिच. II. 189, व्य. प्र. p. 306; similar verses of Nār. VII. 4-5 and Dakṣa III. 19-20 have been quoted in (H. of Dh. vol. II. p. 850 n. 2005).

by Yāj. II 175, Nār. VII. 6 and Bṛ. (SBE 33 p. 342 verse 3), Kāt. 640 viz. whatever is absolutely one's own excepting that required for the maintenance of one's family may be given.[817] Manu (XI. 9–10), Nār. VII. 6 and Bṛ. (quoted in H. of Dh. vol. II pp. 850–851 n. 2007) condemn those who stint their family or servants in order to be charitable to others and say that he who does so would incur sin. Manu XI. 7 (=Nār. VII. 7), Vas. VIII. 10, Yāj. I. 124, Viṣṇu Dh. S. 59.8 prescribe that he alone who has property sufficient to provide for three years' maintenance for those whom he is bound to maintain or has more wealth than that may drink *soma* i. e. may engage in a soma sacrifice (which costs much).

Nār. VII. 8 states that there are seven kinds of *datta* gifts, i. e. gifts or transfers that cannot be resumed because they are made by a person in full possession of his faculties and of things that belong to him absolutely and are not forbidden. They are: the price paid for goods bought, wages, what is paid for pleasure (derived from dancing, singing, wrestling), a gift through affection, a gift made in gratitude, money paid to a bride's kinsmen, and gifts for spiritual or charitable purposes. Acc. to Bṛ.[818] (SBE vol. 33 p. 343 verse 8) there are eight kinds of valid gifts. Nār. VII. 9–11 mentions sixteen kinds of invalid gifts, which have already been set out (in H. of Dh. vol. II. p. 887 where Gaut. V. 22 that specifies some invalid gifts has also been cited). Vide Kāt. 647. The difference between gifts of *adeya* and *adatta* gifts is this. In the first class of cases, the gifts being forbidden are entirely null and void, while *adatta* gifts are those that are voidable and may be set aside by the court on the application of the donor himself, because of the incapacity of the donor due to intoxication, lunacy, old age, minority, mistake etc. Kāt. 646 and Kauṭ. (III. 13) state

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817. सर्वस्वं गृहवर्जं तु कुटुम्बभरणाधिकम् । यद् द्रव्यं तत्स्वकं देयमदेयं स्यादतोऽन्यथा ॥ कात्या. 640 q. by परा. मा. III. 214, वि. र. p. 129, स. वि. p. 283. Kāt. prohibits the gift of a house if a man owns only one.

818. भृत्या तुष्ट्या पण्यमूल्यं स्त्रीशुल्कमुपकारिणे । श्रद्धानुग्रहणं प्रीत्या दत्तमष्टविधं विदुः ॥ बृह. q. by स्मृतिच. II. p. 193. कात्यायन 644–645 explain भृति and प्रत्युपकार occurring in नारद and बृह., the first being a reward for finding out a lost article or an unknown offender and the second being a reward for protecting a man from danger or for guarding the donor's property when he was a minor or effecting some object desired by the donor (such as his marriage &c.)

that if a man[819] is in danger of life and promises the gift of all his property to whomsoever may save him, he may resile from the promise and pay only what an expert or arbitrator may award. Kāt. (650–651) defines *utkoca* (bribe)[820] as what is obtained in these ways viz. by giving (or threatening to give false) information about a person as a thief or a felon, or as one who breaks the rules of decent conduct, or as an adulterous person, or by pointing out those who are of bad character or by spreading false reports about a person. He further provides that a person offering the bribe should not be fined, but the intermediary may be fined and if the person accepting the bribe has been appointed to an office by the king he should be made to return the bribe and pay a fine eleven times as much to the king. But Kāt. adds that where a person not holding a public appointment obtains some gratification for work done, he would not be held guilty and would not have to return what he received as a reward or in gratitude. Hārīta holds out[821] other-worldly evil consequences for not actually delivering what is promised or for resuming what has been already delivered as a gift viz. the person doing so falls into Hell and is born as one of the lower animals and adds that what is promised as a gift for a religious purpose in so many words but is not actually delivered becomes a debt in this world and the next i. e. the king should make the promisor give the

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819. प्राणसंशयमापन्नं यो मामुत्तारयेदितः । सर्वस्वं तस्य दास्यामीत्युक्तेऽपि न तथा भवेत् ॥ कात्या. 646 q. by अपरार्क p. 781, नि. र. p. 134, स्मृतिच. II. p. 193; नदीवेगज्वालास्तेनव्यालोपरुद्धः सर्वस्वपुत्रदारात्मदानेनार्तस्त्रातारमाहूय निस्तीर्णः कुशलप्रदिष्टं वेतनं दद्यात्। तेन सर्वत्रार्तदानानुशया व्याख्याताः ॥ अर्थशास्त्र III. 13.

820. स्तेनसाहसिकोद्वृत्तपारजायिकशंसनात् । दर्शनाद् वृत्तनष्टस्य तथासत्यप्रवर्तनात् । प्राप्तमेतैस्तु यत्किञ्चित् तदुत्कोचाख्यमुच्यते । न दाता तत्र दण्ड्यः स्यान्मध्यस्थश्चैव दोषभाक् । नियुक्तो यस्तु कार्येषु स चेदुत्कोचमाप्नुयात् । स दाप्यस्तद्धनं कृत्स्नं दमश्चैकादशाधिकम् ॥ अनियुक्तस्तु कार्यार्थमुत्कोचं यमवाप्नुयात् । कृतप्रत्युपकारार्थस्तस्य दोषो न विद्यते ॥ कात्या. 650–653 q. by स. वि. 286, अपरार्क 782, परा. मा III. 320, व्य. प्र. p. 312, व्य. म. p. 205. The Indian Penal Code, section 116 (illustration a) read with sec. 161, makes one who offers a bribe to a public servant punishable as an abettor. The ancient Indian law exempting the offerer from punishment would appear to be more reasonable from certain points of view.

821. प्रतिश्रुतार्थादानेन दत्तस्याच्छेदनेन च । विविधान्नरकान् याति तिर्यग्योनौ च जायते ॥ वाचैव यत्प्रतिज्ञातं कर्मणा नोपपादितम् । ऋणं तद्धर्मसंयुक्तमिह लोके परत्र च ॥ हारीत q. by व्य. प्र. p. 310, विवादचन्द्र p. 36, स्मृतिच. II. p. 192 which remarks 'ऋणवदित्यभिधानेन अर्थादप्रदायको दाप्यो दण्ड्यश्चेत्युक्तम्'. स. वि. p. 285 ascribes the first verse to कात्या. and reads 'कल्पकोटिशतं मर्त्यास्तिर्यग्योनौ०'.

promised gift and should inflict a fine. Kāt. (642) provides[822] that a man who having voluntarily promised a gift to a brāhmaṇa does not deliver it should be made to render it as a debt and should be awarded the lowest amercement and further (verse 566) that if a man promises a gift for a religious purpose whether in good health or in disease, his son (or other heir) should be made to pay it if the promisor died without actually delivering it. These verses show that in two cases gifts though not completed by delivery of possession were enforced by ancient Indian courts viz. when the gift was promised to a brāhmaṇa or when the gift was declared to be made for a religious and charitable purpose. The last verse contains the beginnings of the idea of a will, since the mere declaration of the intention of a man to give for a religious purpose is made enforceable after his death against his son or heir. But this germ could not evolve into a full-fledged law of testamentary succession on account of the practice of adoption, the requirement that a gift must be accompanied by present possession and the incidents of the joint family on account of which no single member could alienate family property except for legal necessity and which involved the doctrine that on the death of a member his rights ended and passed by survivorship to other members. Bṛ. expressly states this.[823] But a gift though promised need not be paid or carried out if the promisee turns out to be an irreligious man (Gaut. V. 21). Nār. VII. 12 and Bṛ. provide that he who enjoys an invalid gift and he who makes a forbidden gift are both to be punished by the king.[824]

In H. of Dh. vol. II. p. 841 it has been stated that gift consists in the cessation of the ownership of the donor in a thing and creating ownership in another. This latter is effected by acceptance (*svīkāra*) by the donee. Acceptance may be made mentally, vocally or physically. For the formalities accompanying a gift such as sprinkling water on the thing donated and the

822. स्वेच्छया यः प्रतिश्रुत्य ब्राह्मणाय प्रतिग्रहम् । न दद्यादृणवद्दाप्यः प्राप्नुयात्पूर्वसाहसम् ॥ कात्या q. by स्मृतिच. II. p. 192, स. वि. p. 285, व्य. प्र. p. 310 ; स्वस्थेनार्तेन वा देयं श्रावितं धर्मकारणात् । अदत्त्वा तु मृते दाप्यस्तत्सुतो नात्र संशयः ॥ कात्या. q. by वि. चि. p. 16, व्य. प्र. p. 313, स. वि. p. 287, विवादचन्द्र p. 37 ; प्रतिश्रुत्याप्रदातारं सुवर्णं दण्डयेन्नृपः । मत्स्यपुराण 227. 8 q. by व्य. प्र. p. 310 ; प्रतिश्रुत्याप्यधर्मसंयुक्ताय न दद्यात् । गौ. V. 21.

823. मदूर्ध्वमिति यद्दत्तं न तत्स्यात्स्वाग्रहं भवेत् । तेनदानीमदत्तत्वान्मृते रिक्थसमापतेत् ॥ बृह. q. by व्यव. नि. p. 298.

824. अदत्तभोक्ता दण्ड्यः स्यात्तथादेयप्रदायकः । बृह. q. by स. वि. p. 288.

offering of a *dakṣiṇā* to the donee, vide H. of Dh. vol. II. p. 855. Some writers like Jīmūtavāhana dispute the statement[825] that acceptance is necessary to constitute a gift. The Dāyabhāga states that by the mere relinquishment of a thing by the donor (i. e. by the activity of the donor himself) the ownership of the thing passes to the person intended as the donee, that the ownership of the other man does not arise by acceptance, that though ownership in the donee does arise by the mere activity of the donor, yet acceptance (svīkāra) which is an activity of the donee makes the thing donated capable of being disposed off by the donee as he likes on account of his idea 'this is mine'. The Dāyabhāga indulges in casuistical reasoning in support of its view, which it is not necessary to set out here. But the remarks of the Dāyabhāga are not satisfactory, since it does not adequately explain what is to happen if the intended donee refuses the gift On its hypothesis ownership has passed to the donee without acceptance being necessary. If the donee refuses, or dies without accepting, who is the owner? Can it be said that the thing becomes the property of whosoever first takes it up and that the donor cannot prevent a third person taking it up? The V. P. pp. 426–428 severely criticizes the Dāyabhāga for its views.

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825. इदं च लोकेपि दाने हि चेतनोद्देशविशिष्टत्यागादेव दातृव्यापारात्सम्प्रदानस्य द्रव्ये स्वामित्वम् । न च स्वीकरणात् स्वत्वं स्वीकर्तुरेव दातृत्वापत्तेः । ... उत्पन्नमपि स्वत्वं संप्रदानव्यापारेण ममेदमिति ज्ञानेन यथेष्टव्यवहारार्थं क्रियत इति स्वीकारशब्दार्थः । दायभाग I. 21–24 pp. 13–15.

CHAPTER XX

VETANASYĀNAPĀKARMA, ABHYUPETYAŚUŚRŪṢĀ AND SVĀMIPĀLAVIVĀDA

(Non-payment of wages, non-rendition of service, dispute between master and herdsman).

The question about the payment or non-payment of wages to those whose services are hired for work is dealt with under this title (Nār. IX. 1). According to Bṛ. there[826] are three titles of law in which the question of hiring enters, viz. *abhyupetyāśuśrūṣā*, *vetanasyānapākarma* and *svāmipālavivāda*. Manu and Kauṭ. do not treat of the first of these three. Here *vetanasyānapākarma* will be first dealt with, then *abhyupetyāśuśrūṣā* and *svāmipālavivāda* will be separately treated of. All these three topics are concerned with masters and servants or employers and employees. The rules are different according as the contract of service is for a fixed term or for an indefinite period or is for executing a definite piece of work and according as the rate of wages or the hire is fixed beforehand or is not fixed. We have further to remember that the rules are spread over a large period i. e. from about 6th century B. C. to about 500 A. D. (from Gaut. and Āp. to Bṛ. and Kāt.). The rules deal with the liabilities of both masters and servants. Nār. IX. 2 states that the wages agreed upon may be paid at the beginning, in the middle or at the end of the work undertaken. But when no wages are settled beforehand Nār. IX. 3, Yāj. II. 194, Kauṭ. III.[827] 13 provide that the (agent of a) trader, the cowherd, the husbandman should receive a tenth part respectively of the profit, of the milk and of the crops. This latter according to the Sm. C. II p. 201 holds good where the crops are raised easily. But Bṛ.

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826. अदेयादिकमाख्यातं भृतानामुच्यते विधिः । अशुश्रूषाभ्युपेत्यैतत्पदमाद्यं निगद्यते ॥ वेतनस्यानपाकर्म तदनु स्वामिपालयोः । क्रमशः कथ्यते वादो भृतभेदत्रयं त्विदम् ॥ बृह. in वि. र. p. 139, वि. चि. p. 41.

827. कर्मकालानुरूपमसम्भाषितवेतनः । कर्षकः सस्यानां गोपालकः सर्पिषां वैदेहकः पण्यानामात्मना व्यवहृतानां दशभागमसंभाषितवेतनो लभेत ॥ अर्थशास्त्र III. 13 ; भृतावनिश्चितायां तु दशभागं समाप्नुयुः । लाभगोबीजसस्यानां वणिग्गोपकृषीवलाः ॥ नारद IX. 3. This is ascribed to कात्या. by स. वि. p. 298.

(S. B. E. vol. 33 p. 345 [828] verse 13) lays down the rule that if the employer supplies food and clothing to the servant, the latter should get a fifth part of the crops (if no wages are settled) or a third part if the servant is given no food nor clothing by the employer. When no wages are settled Vṛddha-Manu prescribes that proper wages will be determined by experts in carrying [829] maritime trade (and other traders) who take into consideration the time, the place and the purpose. Even when the wages were settled the employer could give less or more according to his pleasure in certain cases viz. when a servant or agent acts against the restrictions of time and place prescribed by his employer and consequently the profit is much less, the employer may give less than what is agreed but if the agent brings more profit (than expected) he may give more (Yāj. II. 195). When two or more employees undertake to finish a work but cannot finish it (owing to ill-health or similar obstacle) each of them should be given the wages appropriate to the portion done by each (as settled by an arbitrator), but if the whole work is finished by them the agreed wages must be paid to all of them together (Yāj. II. 196). Yāj. II. 193, Nār. IX. 4 and [830] Bṛ. state that it is the duty of the employed or servant to take as much care of the utensils supplied by the employer as he would take of his own, and that he should not act in that respect wantonly (or crookedly) and that if he did so his wages would become less. If a hired servant, after receiving his wages, does not do the work agreed to be done though able to do so, he should be made to repay to the employer the wages received and a fine equal to double of the wages and if he had not received wages but left the work without cause he should be made to pay to the employer

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828. भक्ताच्छादभृतः सीराद्भागं गृह्णीत पञ्चमम् । जातसस्यात् त्रिभागं तु प्रगृह्णीयादथाभृतः ॥ बृह. q. by स्मृतिच. II. p. 202, व्य. प्र. p. 324, स. वि. p. 298.

829. समुद्रयानकुशला देशकालार्थदर्शिनः । नियच्छेयुर्भृतिं यां तु सा स्यात् प्रागकृता यदि ॥ वृद्धमनु q. by वि. र. p. 158, व्य. प्र. p. 324. The स्मृतिच. II. 202 ascribes it to Manu. Compare अर्थशास्त्र III. 13 'कारुशिल्पिकुशीलवचिकित्सकवाग्जीवनपरिचारकादिराशाकारिकवर्गस्तु यथान्यस्तद्विधः कुर्याद् यथा वा कुशलाः कल्पयेयुस्तथा वेतनं लभेत ।'

830. क्रियोपकरणं चैषां क्रियां यत्नस्तुदाहृतम् । तत्स्वभावेन कुर्वीत न जिह्मेन समाचरेत् ॥ नारद IX. 4. स्मृतिच. II. p. 202 and परा. मा. III. 324 read आत्मभावेन तद्रक्ष्यं न जैह्म्येन &c.; भृतकस्तु न कुर्वीत स्वामिनः शाठ्यमण्वपि । भृतिहानिं समाप्नोति ततो वादः प्रवर्तते ॥ बृह. q. by स्मृतिच. II. p. 202, परा. मा. III. p. 324.

an amount equal to the wages (Yāj. II. 193, Nār. IX. 5, Bṛ. in[831] S. B. E. vol. 33 p. 345 verse 15). Kauṭ. (III. 14) prescribes a fine of 12 paṇas for a hired servant who does not do the work undertaken even after receiving the wages and that he should be compelled to do the work. Nār. IX. 5 and Kāt. 657 provide that that the king should compel him to do the work and then the agreed wages may be paid to him ; but if he does not do it he should be fined.[832] The fine in such cases acc. to Vṛddha-Manu was 200 paṇas. Manu VIII. 215 and Bṛ. (S. B. E. 33 p. 345 verse 16) and Matsya 227. 9 provide that a hired servant, who though not ill, does not arrogantly do the work agreed should be fined eight *kṛṣṇalas* and would not get wages at all. This applies where a substantial portion is left undone, but where only a little of the work undertaken is left undone then the servant is not to be fined, but he would lose all the wages (Manu VIII. 217). But if a servant falls ill, then he may do the work after he becomes well and would get the agreed wages even if a long time may have elapsed (Manu VIII. 216). Kauṭ. (III. 14) also provides that if the servant suffers from illness or is overwhelmed by a calamity, concession may be given to him or he may offer a substitute. The Āp. Dh. S. (II. 11. 28. 2-4) prescribes that if a husbandman who is not a slave but is hired for work) gives up the work or a cowherd acts similarly he should be punished with flogging and the animals handed over to the cowherd should be taken back from him. This may have been the ancient law, but it was modified in later ages. Kauṭ. (III. 13) states that if the employer does not pay the wages he should be fined six paṇas or a tenth part of the proper wages or the wages agreed upon and if the hired person denies the receipt of wages (though he really received them) he should be fined twelve paṇas or a fifth part of the wages.[833] Kauṭ. (III. 14) further provides that in the contract of service it may be provided that the master is not to employ

831. गृहीतवेतनः कर्म न करोति यदा भृतः । समर्थश्चेद् दमं दाप्यो द्विगुणं तच्च वेतनम् ॥ बृह. q. by स्मृतिच. II. p. 202, वि. र. p. 159 ; कर्मारम्भं तु यः कृत्वा सिद्धं नैव तु कारयेत् । बलात्कारयितव्योऽसावकुर्वन् दण्डमर्हति ॥ कात्या. 657 q. by स्मृतिच. II. p. 203, वि. र. p. 110 ; गृहीत्वा वेतनं कर्माकुर्वतो भृतकस्य द्वादशपणो दण्डः । संरोधश्चाकारणात् । अर्थशास्त्र III. 14.

832. प्रतिश्रुत्य न कुर्याद्यः स कार्यः स्याद् बलादपि । स चेन्न कुर्यात्तत्कर्म प्राप्नुयाद् द्विशतं दमम् ॥ वृद्धमनु q. by स्मृतिच. II. p. 203, परा. मा. III. p. 325, व्य. प्र. p. 325.

833. वेतनादाने दशबन्धो दण्डः षट्पणो वा । अपव्ययमाने द्वादशपणो दण्डः पञ्चबन्धो वा । अर्थशास्त्र III. 13.

another servant or that the servant is not to work for another master during the period fixed.

Yāj. II. 197, Nār. IX. 9, Kāt. 659, Viṣṇu Dh. S.[834] V. 155–156 provide that if through the fault of a carrier (and not through act of God or the king) goods entrusted to him for carrying are lost or become deteriorated, he should be made to pay for the loss. Vṛddha-Manu specifies that if the goods are lost through the negligence of the servant he has to pay only the price, but if through spite then he should be made to pay double the price. If a hired servant (such as a palanquin-bearer or an armed guard) causes obstruction (by refusing to work) at the time of starting for an auspicious matter (such as a marriage), he should be made to pay double the amount of the wages agreed upon and another servant may be engaged (Yāj. II. 197, Nār. IX. 8, Kāt. 658, Vṛddha-Manu in V R. p. 163). Yāj. II. 198, Nār. IX. 7 provide that if a servant abandons his work (as a bearer or guard) after a start is made (when not seized by illness) he should be made to pay ⅐, ¼ or the whole of the wages according to the distance traversed and a master abandoning a servant in similar circumstances should be made to pay similarly.

If a servant agrees to take a lump sum for some work to be done for a certain period and leaves the work before the period elapses he would lose all the wages, but if he leaves in the middle of the period through the fault of the employer (such as scolding without any fault of the servant) he would be entitled to receive a proportionate part of the wages (Nār. q. by V. R. p. 161).[835] Viṣṇu Dh. S. V. 153–154 and 157–158 provide that in the same circumstances the servant would have to pay a fine

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834. भाण्डं व्यसनमागच्छेद्यदि वाहकदोषतः। स दाप्यो यत्प्रणष्टं स्याद्दैवराजकृताद्दृते। नारद IX. 9; न तु दाप्यो हृतं चौरैर्दग्धमूढं जलेन वा। कात्या. 659, q. by स्मृतिच. II. p. 203, अपरार्क p. 799, स. वि. p. 300. प्रमादान्नाशितं दाप्यः समं द्विर्द्रोहनाशितम्। वृद्धमनु q. by स्मृतिच. II. p. 203, वि. र. p. 162; तद्दोषेण यद्विनश्येत् तत्स्वामिने। अन्यत्र दैवोपघातात्। विष्णुधर्मसूत्र V. 155-56; विघ्नयन्वाहको दाप्यः प्रस्थाने द्विगुणं भृतम्। कात्या. 658 q. by स्मृतिच. II. p 203, परा. मा. III. p. 327. The provisions for breach of contract of personal service during a journey and the like set out here are very mild as compared with the severe punishment provided for it under section 490 of the Indian Penal Code (repealed in 1925).

835. कालेऽपूर्णे त्यजन् कर्म भृतेर्नाशमवाप्नुयात्। स्वामिदोषादपक्रामन् यावत्कृतमवाप्नुयात्॥ नारद q. in वि. र. p. 161, व्य. प्र. p. 326: त्यजेत्पथि सहायं यः श्रान्तं रोगार्तमेव वा। प्राप्नुयात्साहसं पूर्वं ग्रामे त्र्यहमपालयन्॥ कात्या. 660 q. by वि. र. p. 665, अपरार्क p. 800.

of 100 paṇas and that if the employer abandons the servant before the period fixed has expired he would have to pay the whole of the wages to the servant and a fine of one hundred paṇas (except in the case of act of God and the king). Kāt. (660) provides that a master deserting on a journey his servant that is tired or falls ill should be fined the first amercement if he does not wait for three days in the village. If a trader after engaging a vehicle or draught animals for carrying his merchandise for hire, does not employ them to carry his goods he should be made to pay a fourth of the hire settled and the whole of it if he discharges them when only a part of the journey has been made (Nār. IX. 7). If the merchandise be attached[836] (by the king's officers for toll &c.) or be stolen the servant engaged to carry the goods will receive a proportionate amount (out of the lump sum agreed to be paid for a certain journey) according to the distance travelled (Kāt. 661) If the employer does not pay the wages of a servant even though the latter has done his work the king should make him pay the wages and also a proper fine (Bṛ. in S. B. E. vol. 33 p. 346 verse 18). If a man[837] having hired elephants, horses, bulls, asses or camels does not return them even though the work (for which he hired them) is finished he should be made to restore them together with the hire (up to the day of return). The same rule applies to a man taking on rent a house or water (reservior) or a market and not giving it up at the time fixed (Kāt. 662-663). Nār. (IX. 20-21) provides that if a person builds a house on another's land by paying rent (*stoma*) for the land, he may take away when vacating the land the bricks, the timber and grass (thatch) of the house built by him, but if a man builds a house on another's land without paying rent and against the owner's wish then he has to leave

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836. यद्वा च पथि तद्भाण्डमासिध्येत ह्रियेत वा । यावानध्वा गतस्तेन प्राप्नुयात्तावतीं भृतिम् ॥ कात्या. 661 q. by स्मृतिच. II. 204 ; वि. र. p. 164; कृते कर्मणि यः स्वामी न दद्याद्वेतनं भृते । राज्ञा दापयितव्यः स्याद्विनयं चानुरूपतः ॥ बृह. in स्मृतिच. II. p. 204, वि. र. p. 165.

837. हस्त्यश्वगोखरोष्ट्रादीन् गृहीत्वा भाटकेन यः । नार्पयेत्कृतकृत्यार्थः स तु दाप्यः सभाटकम् । गृहवार्यापणादीनि गृहीत्वा भाटकेन यः । स्वामिने नार्पयेद्यावत्तावद्दाप्यः सभाटकम् ॥ कात्या. 662-663 q. by स्मृतिच. II. p. 205, वि. र. pp. 168-169, परा. मा. III. pp. 330-331. The word भाटक (which corresponds to the word भाडें in Marathi and other vernaculars) appears to be a *prākrit* equivalent of the old Sanskrit word भृति treated again as a Sanskrit word. In Sanskrit वेतन or भृति is used for wages, while भाटक or स्तोम means rent of a house or land or the like.

the materials of his house to the owner of the land when he has to give up the land. An important rule is stated by Br. (S. B. E. vol. 33 p. 346 verse 17) that when a servant[838] employed by an employer does some improper act (such as a theft) to another for the benefit of his master, the latter would be held responsible for the loss. The Matsyapurāṇa says that if a teacher having agreed to teach a lore or craft for money which he receives fails to do so, he should be fined the whole of the amount[839] of the fee.

From the above it will be clear that contracts of service and letting on hire are lumped together under one head by the smṛtis.

Kauṭ. III. 14 provides that persons may be paid wages by a guild or corporation of workers of which they are members. The earnings of such guilds may be divided equally among all workers or as agreed upon among themselves. Yāj. II. 265 also refers to the fact that rules similar to those of partnerships may apply to guilds of husbandmen and artisans.

Certain rules are laid down in Nār. IX. 18, Yāj. II. 292 and Matsyapurāṇa 227. 144-146 about the monetary liabilities of prostitutes and persons visiting them. Vide H. of Dh. vol. II. pp. 638-39 above. The Matsyapurāṇa (227. 144-146) states that a brāhmaṇa who visits a prostitute should be fined as many paṇas as he paid to her, that if a prostitute after receiving her fee does not receive the visitor and goes elsewhere she should be made to pay to the visitor double of the fee and a similar sum as fine to the king, and that if one, after telling a prostitute that she is to visit a certain person, takes her to a different person, he should be fined one gold māṣaka.

The Matsyapurāṇa (227.147) further states that a visitor who has had sexual intercourse with a prostitute and yet has not paid her fee should be made to pay double the (agreed) fee to her and a similar sum as fine to the king. Nārada provides that the chief prostitutes and the voluptuaries that stay with them

838. प्रभुणा विनियुक्तः सन् भृतको विदधाति यत् । तदर्थमशुभं कर्म स्वामी तत्रापराध्नुयात् । बृह. q. by स्मृतिच. II. p. 204 ; वि. र. p. 162. Compare section 238 of the Indian Contract Act as to the principal's liability for his agent's misrepresentation or fraud.

839. मूल्यमादाय यो विद्यां शिल्पं वा न प्रयच्छति । दण्ड्यः स मूल्यं सकलं धर्मज्ञेन महीभृता ॥ मत्स्यपुराण 227. 6 q. by वि. र. p. 163.

should help in deciding monetary disputes in which prostitutes are concerned[840] (q. in Sm. C. II. p. 206 and others). Nār. (IX. 18-19) proscribes the payment of eight times the fee and a similar fine in the case contemplated in Matsya 227.147.

Abhyupetyāśuśrūṣā (non-rendition of service after making a contract to serve or obey)[841]. Nār. VIII. 1 defines it as the title in which after having undertaken to serve or obey one does not act up to it. The ancient dharmasūtras mention only two kinds of servants viz. agricultural labourers and herdsmen. Vide Āp. Dh. S. II. 11. 28. 2-3 and Gaut. XII. 16-17[842]. Acc. to Nār. VIII. 2 and 3 there are five kinds of servers (or attendants) viz. four that are called *karmakara* (performers of labour) and the fifth class comprehends slaves of fifteen kinds; and the four *karmakaras* are pupil (*śiṣya*), apprentice (*antevāsin*), a hired servant (*bhṛtaka*) and one who supervises hired servants (*adhikarmakṛt*). Not being free to do as they like is the common attribute of these five kinds of attendants, but there is a distinction among them due to their castes, their peculiar actions and their mode of maintaining themselves (Nār. VIII. 4). A śiṣya (pupil) is one who desires (from his teacher) instruction in Vedic learning, an antevāsin is one who receives instruction in some craft such as goldsmith's work or dancing, a hired servant is one that does some work for wages, an adhikarmakṛt is one who supervises hired servants. Work is of two kinds, *śubha* (i. e. pure, done by the four kinds of karmakaras) and *aśubha* i. e. impure (done only by slaves). Aśubha acts comprise[843] (Nār. VIII. 6-7 and Kāt. 720) sweeping the doors of houses, pits in which leavings of food are thrown, roads, rubbish heaps; scratching or shampooing the private parts (of the masters); collecting and throwing away leavings of food, ordure and urine and making use of one's limbs (hand &c.) at the master's desire for wiping off the master's private parts; all other actions are pure. Karmakaras do work for securing Vedic learning or *vijñāna* (art or craft), some desire or money. The

840. वेश्याः प्रधाना यास्तत्र कामुकास्तद्गृहोषिताः । तत्समुत्थेषु कार्येषु निर्णयं संशये विदुः ॥ नारद q. by स्मृतिच. II. p. 206, वि. र. p. 167, व्य. प्र. p. 330.

841. आज्ञाकरणं शुश्रूषा तामङ्गीकृत्य पश्चाद्यो न सम्पादयति तद्विवादपदमभ्युपेत्याशुश्रूषाख्यम् । मिता. on या. II. 182.

842. अवशिनः कीनाशस्य कर्मन्यासे दण्डताडनम् । तथा पशुपस्य । आप. ध. II. 11. 28. 2-3.

843. विण्मूत्रोन्मार्जनं चैव नग्नत्वपरिमर्दनम् । प्रायो दासीसुताः कुर्युर्गवादिग्रहणं च यत् । कात्या. 720 q. by वि. र. p. 144.

duties of a vedic student are described by Nār. VIII. 8–15 and have been set out above in H. of Dh. vol. II. pp. 305–312 viz. to wait upon the teacher, his wife and son, to beg for food, to sleep on the ground, to do the bidding of the teacher, to learn the vedas, to offer fee to the teacher at the end of vedic study. An apprentice is distinguished in his actions and mode of maintenance from a śiṣya. The antevāsin, acc. to Yāj. II. 184, Nār. VIII. 16–21, Bṛ. (S. B. E. vol. 33 p. 344 verse 6) and Kāt. 713, resides with a master craftsman to learn some[844] art or craft (such as goldsmith's work, singing, dancing, house-building), agreeing to work under him for a stated period, the master craftsman gives him food and teaches him in his own house, does not put him to any other work; if the apprentice leaves the teacher even though the latter is willing to teach him, he (the pupil) should be made to stay with the teacher and may be whipped or confined; the pupil even though he may have become an adept has to stay with the master till the end of the agreed period and the teacher appropriates the fruits of the apprentice's labour. If the master does not instruct the apprentice in the craft and makes him do other work, he would be liable to pay the first amercement and the pupil may leave him[845].

Hired servants have different grades among them arising from the work they do, the wages they receive and the period for which they are employed and they are distinguished from apprentices in these respects and not as regards caste or mode of maintenance. According to Nār. VIII. 22–23 and Bṛ. (S. B. E. vol. 33, p. 344 verse 8) a hired servant is of three kinds and his wages depend on the work he does and his ability to do it. The three kinds are the highest (viz. a soldier), middling (an agriculturist), the lowest[846] (a porter). A hired servant may

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844. अनेकधा तेऽभिहिता जातिकर्मानुरूपतः । विद्याविज्ञानकामार्थनिमित्तेन चतुर्विधाः । एकैकः पुनरेतेषां क्रियाभेदात्प्रपद्यते ॥ विद्या त्रयी समाख्याता ऋग्यजुःसामलक्षणा । तदर्थं गुरुशुश्रूषां प्रकुर्याच्छास्त्रदेशिताम् । विज्ञानमुच्यते शिल्पं हेमकुप्यादिसंस्कृतिः । नृत्यादिकं च तच्छिक्षन् कुर्यात् कर्म गुरोर्गृहे ॥ बृह. q. by वि. र. pp. 140–41, स्मृतिच. II. p. 195, व्य. प्र. p. 314, व्यवहारसार p. 155 (the last three contain only the last two verses).

845. यस्तु न ग्राहयेच्छिल्पं कर्माण्यन्यानि कारयेत् । प्राप्नुयात्साहसं पूर्वं तस्माच्छिष्यो निवर्तते ॥ कात्या. q. by अपरार्क p. 790, परा. मा. III. 338, वि. र. p. 141.

846. बहुधार्थभृतः प्रोक्तस्तथा भागभृतोऽपरः । हीनमध्योत्तमत्वं च सर्वेषामेव चोदितम् ॥ दिनमासार्धषण्मासत्रिमासाब्दभृतस्तथा । कर्म कुर्यात्प्रतिज्ञातं लभते परिभाषितम् ॥ बृह. q. by स्मृतिच. II. p. 196, परा. मा. III. p. 339–40.

be engaged for a day, a fortnight, a month or for longer periods, should perform the work undertaken and get the wages agreed upon. He may be paid in cash or by giving him a share of crops or a share in the milk of the cattle he tends[847].

A person who is employed and given authority over all servants and also one who looks to the affairs (expenditure &c.) of the household is called 'adhikarmakṛta (or-kṛt), acc. to Nār. VIII. 24. All these four are called workers in clean occupations, while the fifteen kinds of slaves are employed in the lowest and dirtiest work (Nār. VIII. 25). The difference between the hired servants and slaves is this that the latter surrender all their freedom and themselves entirely to another, while the former, though dependent to some extent, do retain some freedom (Kāt. 715), but a brāhmaṇa was not to be a slave[848]. In very ancient times the master's liability for the acts of his servant does not seem to have been recognized. For example, Gaut. XII. 17 states that if cattle entrusted to a herdsman cause loss to crops, then the herdsman is to be held responsible (and not the owner who employs the herdsman). But Manu VIII. 243, Yāj. II. 161, Nār. XIV. 29 appear to hold the master liable to make good the loss caused by the herdsman's default. Vide Bṛ. quoted above under *ṛṇānasyānapākarma*.

The kinds of slaves and the incidents of slavery have been already dealt with in H. of Dh. vol. II. pp. 180-189. A few matters not referred to there may be dealt with here. 'Buddhist India' p. 55 (by Rhys Davids) shows how slavery in the Buddhist period was not as miserable as under the Greeks. The Rājataraṅgiṇī IV. 39 states that king Vajrāditya of Kashmir (in the 8th Century A. D.) sold many men as slaves to Mlecchas. One cannot help blaming the British Indian Government for the Assam Labour and Emigration Act (VI of 1901) whereby a modified form of serfdom or slavery was legalised for the benefit of the tea planters of Assam, Bengal and other provinces and by sections 168-169 of which poor indentured labourers who were induced to labour on the sumptuous monthly wages of five rupees were liable to be sentenced to fine or in

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847. द्विप्रकारो भागभृतः कृषिगोजीविनः स्मृतः । जातसस्यात्तथा क्षीरात्स लभेत न संशयः ॥ बृह. q. by स्मृतिच. II. p. 196, व्य. प्र. p. 316, वि. र. p. 143.

848. स्वतन्त्रस्यात्मनो दानाद्दासत्वं दारवद्भृगुः । त्रिषु वर्णेषु विज्ञेयं दास्यं विप्रस्य न कचित् । कात्या. 715 q. by अपरार्क p. 788, स्मृतिच. II. p. 197.

default to imprisonment, if they left off the work to which by agreement they were tied down in unhealthy districts and unhealthier surroundings.

Kāt. (725) provides that[849] if a woman who is not a slave marries a slave she becomes a slave since her husband is her lord and is dependent on his master. If a person buys or sells a brāhmaṇa woman[850] as a slave the king should annul that transaction and all persons (concerned in it) should be fined by him and the same holds good in the case of a woman of a respectable family who took shelter with a person and was made a slave by him or transferred by him to another as a slave (Kāt. 726–727). The punishment of first amercement is prescribed for a person who has sexual intercourse with the nurse of his child or with another woman who is not a slave and the wife of his attendant as if she were a slave; and a fine of two hundred paṇas is provided in case a master who is not in difficulties and is well-off desires to sell a female slave who is faithful and weeps bitterly (being unwilling to leave him). Nār. VIII. 40 provides that if a slave leaves his master and goes over to another saying 'I am your slave' that would not help the slave, as his former owner would be entitled to claim him back. Uśanas states[851] that a *guru* (elderly person), a *sapiṇḍa*, a brāhmaṇa and persons of the lowest castes (cāṇḍālas &c.) cannot be made slaves, nor can any one (of the higher castes) who is superior in learning be the slave of one of the same caste.

849. दासेनोढा त्वदासी या सापि दासीत्वमाप्नुयात् । यस्माद्भर्ता प्रभुस्तस्याः स्वाम्यधीनः प्रभुर्यतः ॥ कात्या. q. by स्मृतिच. II. 201, व्य. प्र. p. 322, स. वि. p. 294.

850. आदद्याद् ब्राह्मणीं यस्तु विक्रीणीत तथैव च । राज्ञा तदकृतं कार्यं दण्ड्याः स्युः सर्व एव ते ॥ कामात्तु संश्रितां यस्तु दासीं कुर्यात्कुलस्त्रियम् । संक्रामयेत वान्यत्र दण्ड्यस्तत्कृतं भवेत् ॥ बालधात्रीमदासीं च दासीमिव भुनक्ति यः । परिचारकपत्नीं वा प्राप्नुयात्पूर्वसाहसम् ॥ विक्रोशमानां यो भक्तां दासीं विक्रेतुमिच्छति । अनापदिस्थः शक्तः सन् प्राप्नुयाद् द्विशतं दमम् ॥ कात्या. q. by अपरार्क p. 789, वि. र. pp. 154–155, व्य. प्र. p. 323.

851. न गुरुर्न सपिण्डश्च न विप्रो नान्त्ययोनयः । दासभावं न तेऽर्हन्ति न च विद्याधिको द्विजः ॥ उशनस् q. by स. वि. p. 296, which explains 'ब्राह्मणस्य अन्त्ययोनिर्न दासः विद्याधिकश्च । एवं क्षत्रियादेर्ब्राह्मणः । समवर्णे तु विद्याधिको न दासः ।.'

CHAPTER XXI

SAṀVID-VYATIKRAMA AND OTHER TITLES

(Violation of compacts or conventions)

Nār. (XIII. 1) employs the expression *samayasyānapākarma*. Manu VIII. 5 employs the first expression. Manu (VIII. 218-219) has both names in view, when he says 'I shall now declare the rules applicable to those who violate *samayas* (conventions). He who having entered into a compact (*saṁvid*) under (the sanction of) an oath with the inhabitants of a village or a district or with a group of traders or other persons breaks it through greed should be banished from the kingdom by the king.' In Āp. Dh. S. I. 1. 1. 2 and II. 4, 8. 13 the word 'samaya'[852] is employed in the sense of 'convention or accepted doctrine'. The same word is also used in the sense of 'agreement' as in Yāj. I. 61 (*gāndharvaḥ samayānmithaḥ*). In this title it means 'the acceptance of a certain rule or convention arrived at by many', as explained by[853] Medhātithi on Manu VIII. 219. It signifies a local or caste usage or convention made by groups of people (such as guilds and corporations) binding on all members that form or join the several groups. The Amarakośa holds that *ācāra* and *saṁvid* are among the several meanings of *samaya*. Medhātithi explains that, if the inhabitants of a village come to a decision that they would oppose the inhabitants of a neighbouring village who were indulging in grazing their cattle in the pastures of the former village or diverting the watercourses and that if in doing so there was a riot or a suit were filed before the king, all should

852. धर्मज्ञसमयः प्रमाणं वेदाश्च । आप. ध. सू. I. 1. 1. 2; अज्ञानां तु प्रधानैरव्यपदेश इति न्यायवित्समयः ॥ आप. ध. सू. II. 4. 8. 13.

853. समयमिव्द्रिः (समयः सिद्धः ?) सङ्केन इदं मया भवतामनुमते निश्चितं कर्तव्यमित्यभ्युपगमः । मेधा. on मनु 8. 219; समयाः शपथाचारकालसिद्धान्तसंविदः । अमरकोश. Medh. on Manu VIII. 220 takes the word 'saṅgha' by itself and Bühler (S. B. E. vol. 25 p. 293) is misled (probably by some corrupt ms) into translating as 'belonging to a corporation inhabiting a village or a district'. मेधा. says: 'एवं ग्रामसमुदायो देशसंघः (देशः सङ्घः) एकधर्मानुगतानां नानादेशवासिनां नानाजातीयानामपि प्राणिनां समूहो यथा भिक्षूणां सङ्घो वणिजां सङ्घश्चातुर्विद्यानां सङ्घ इति ।'

be of one mind, that any one of those who encouraged this decision would be liable to be punished if he backed out of it through some inducement offered by the headman of the other village. Nār. XIII. 1 explains that *samaya* means the rules (or conventions) settled among heretics, *naigamas*[854] and the like. Yāj. II. 192 and Nār. XIII. 2 provide that the conventions of guilds, *naigamas*, heretics, śreṇis, pūgas, gaṇas and in towns and districts should be enforced by the king and their traditional mode of conducting their business should be protected. Some remarks have already been made on guilds and corporations above (pp. 156–57 notes 196–198). Vide also H. of Dh. vol. II. pp. 66–69 for the guilds and corporations and the meanings of words like *śreṇi*, *pūga*, *gaṇa* etc. Some further information is added here. The Sm. C. (II. p. 223) has a very[855] interesting note illustrating the various conventions of several groups and its remarks are copied *verbatim* by the V. P. pp. 332–333. It says : ' Even heretics have certain rules made for the benefit of their monasteries. Among naigamas there is a practice that those who disregard messages brought by servants wearing a specific jacket (as a uniform) should be fined. Śreṇis are guilds of craftsmen such as weavers. They have rules that certain articles are to be sold only by a certain guild and by no other. Pūgas are groups of elephant riders and horse riders.' Vrāta is defined by Kāt. as a body of persons armed with various weapons, while the Mahābhāṣya on Pāṇini V. 2. 21 (*vrātena jīvati*) explains it as a 'group of men of several castes and several occupations who make a living by relying on their formidable bodies '. Acc. to the Mit. heretics are those like the Bauddhas who do not regard the Veda as authoritative. Gaṇa means, acc.

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854. नैगम is defined by षट्त्रिंशन्मत as follows: पौरुषेयतया वेदं प्रामाण्यं (वेदप्रामाण्यं ?) प्रवदन्ति ये । तेषां वैशेषिकादीनां नैगमाख्या प्रकीर्त्यते ॥ q. by व्यव. नि. p. 13. But this sense is not appropriate here. The same work (p. 14) quotes कात्यायन's definition which is more appropriate 'नानापौरसमाजस्तु नैगमाख्यः प्रकीर्तितः ।'

855. पूगव्राते चान्योन्यमुत्सृज्य समरे न गन्तव्यमित्यादयः सन्ति समयाः । गणे तु पञ्चमोऽह्नि पञ्चमे वाब्दे कर्णवेधः कर्तव्य इत्येवमादिरस्ति समयः । गणादिष्वत्रादिशब्देन ब्रह्मपुरीमहाजनः परिगृहीतः । तत्र गुरुदक्षिणाद्यर्थमागतो माननीय इत्यादिसमयोऽस्ति । दुर्गे तु धान्यादिकं गृहीत्वा अन्यत्र यास्यतो न तद्विक्रेयमित्यस्ति समयः । जनपदे तु कश्चिद्विक्रेतृहस्ते दशबन्धग्रहणं कार्यं कश्चित्क्रेतृहस्ते इत्यादिकोऽस्त्यनेकविधः समयः । जनपदे तथेत्यत्र तथाशब्दोऽनुक्तग्रामघोषपुरादीनां प्रदर्शनार्थः । तत्र न गोप्रचारस्थाने खातव्यमित्यादिकोऽस्ति ग्रामे समयः । आभीरस्त्रीपुरुषव्यभिचारे न दण्ड इत्यादिकोऽस्ति घोषे समयः । स्मृतिच. II. p. 223 on नारद XIII. 2 'पाषण्डिनैगमश्रेणीपूगव्रातगणादिषु । संरक्षेत् समयं राजा दुर्गे जनपदे तथा ॥'.

to Mit. 'an assemblage of armed persons subsisting by following one occupation', while Kāt. (680) says it is a corporation of brāhmaṇas. In the Rājat. II. 132 reference is made to corporations of purohitas at temples and tīrthas (sacred places). The Sm. C. states that among pūgas and vrātas there is a convention that they must go to battle all together and not separately. Among gaṇas there is a usage that the lobes of the ear (of a child) are to be pierced on the 5th day or in the fifth year from birth. Among *mahājanas* in a settlement of brāhmaṇas there is a convention that a brāhmaṇa repairing to them for collecting fees to be paid to his teacher (at the close of Vedic study) should be honoured (i. e. should be paid some contribution). In certain districts there is a usage that either the seller or the buyer should keep in his hand $\frac{1}{10}$ of the price (probably for finding out whether the article is useful for the purpose in hand and resiling from the bargain if it is not). In forts or capitals there is a rule that corn taken out of it by a person with him when going out elsewhere should not be sold by him. In villages there is a rule that in pastures no digging would be allowed. In the hamlets inhabited by ābhīras there is a convention that for adultery by a male or female there is to be no fine. It does credit to the ancient writers on dharmaśāstra that they were tolerant enough to require the king, whatever his own religious persuasion might be, to honour and enforce the usages of even heretics among themselves. The only requirement was that the enforcement of their usages must not be opposed to the interest of the country or the capital and must not cause commotion and must not be plainly immoral[856] (Nār. XIII. 4-5 and 7 and Medhātithi on Manu VIII. 220). Yāj. (II. 188-192) lays down the following rules : there should be a committee (of two, three or five, acc. to Bṛ.)[857] to look after the business of the guilds &c. (called *kāryacintaka*) who should be religious, pure, not covetous and all members should carry out what they decide upon ; when the committee members approach the king on some business of their guild he should bestow on them gifts and

856. दोषवत्करणं यत्स्यादनाम्नायप्रकल्पितम् । प्रवृत्तमपि तद्राजा श्रेयस्कामो निवर्तयेत् ॥ नारद (समयस्यानपाकर्म 7) on which the व्य. प्र. p. 337 has the following instructive note : यल्लोभादिदोषवत्करणं श्रुतिस्मृतिविरुद्धं विधवादौ वेश्यात्वादिकं पाषण्डादिभिः प्रकल्पितं तद्बहुकालप्रवृत्तमपि राज्ञा निवर्तनीयमित्यर्थः ।

857. द्वौ त्रयः पञ्च वा कार्याः समूहहितवादिनः । कर्तव्यं वचनं तेषां ग्रामश्रेणिगणादिभिः ॥ बृह. q. in स्मृतिच. II. p. 224, व्य. प्र. p. 334. For the qualities of the committee members (similar to Yāj. II. 191) vide Bṛ. (S. B. E. vol. 33 p. 347 verse 9) q. by व्य. प्र. p. 334.

honour them. Whatever is obtained by any one sent on the business of the group must be handed over by him to the heads of the group (also Bṛ. in S. B. E. vol. 33 p. 349 verse 22)[858] and if he does not do so he should be fined eleven times as much. Whoever goes against the heads of the group that are working for its benefit should be punished in the first amercement (by the group itself, acc. to Sm. C. II. p. 224). Kāt. (677) states the general rule that whatever is obtained (by the committee or advisers of the group) or is saved by them or whatever debts are incurred by them for their group and whatever they obtain through the king's favour should be shared equally by all (members of the group). Kāt. (674–675) provides that whatever debt was professedly incurred by the committee for the group but was misappropriated by them or applied to their individual purposes must be paid by them and that those who subsequently join the groups already formed become equally entitled to the property and liable for the debts previously acquired or incurred. Manu VIII. 220 and Bṛ. (S. B. E. vol. 33 p. 348 v. 14) provide a fine of six *niṣkas* of four suvarṇas each (or six niṣkas and four suvarṇas) for him who falls out with his associates. Kāt. (671) provides that that member (of a group) who opposes what is reasonable, who gives no scope to (i. e. obstructs or persistently interrupts) a speaker (in a meeting of the group) or who speaks absurdly should be made to pay the first amercement. Yāj. II. 187 prescribes forfeiture of all property and banishment for him who misappropriates the property of the group or corporation or who violates the conventions made by the group (or the king). As stated by the Mit. this and other sentences depended upon the nature and gravity of the offence and the capacity of the offender[859].

Krayavikrayānuśaya (repentance after purchase or sale). Manu VIII. 222 and Kauṭ. III. 15 regard this as one title of law. But Nār. (XI and XII) splits this into two titles viz. *vikrīyāsampradāna* (non-delivery of a thing after it is sold for a price) and *krītvānuśaya* (repentance after buying). Manu states the general rule that whenever a person after buying

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858. यत्तैः प्राप्तं रक्षितं वा गणार्थे वा ऋणं कृतम्। राजप्रसादलब्धं च सर्वेषामेव तत्समम्॥ गणमुद्दिश्य यत्किञ्चित्कृत्वर्णं भक्षितं भवेत्। आत्मार्थं विनियुक्तं वा देयं तैरेव तद्भवेत्॥ गणानां श्रेणिवर्गाणां गताः स्युर्ये तु मध्यताम्। प्राक्तनस्य धनर्णस्य समांशाः सर्व एव ते॥ कात्या. q. by स. वि. p. 330-331, वि. र. p. 187, स्मृतिच. II. p. 227, व्य. म. p. 338

859. मनुप्रतिपादितदण्डानां निर्वासनचतुःसुवर्णनिष्कशतमानानामन्यतमो जातिशक्त्याद्यपेक्षया कल्पनीयः। मिता. on या. II. 187.

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or selling anything repents of having done so, he may return or take back that thing within ten days. Nār. XI. 2 states that property is of two kinds in this world viz. movable and immovable and that all property is designated as *paṇya* (saleable) in rules about purchase and sale. According to Yāj. II. 254, Nār. XI. 4–5, Viṣṇu Dh. S. V. 127 [860], if a man sells property and does not deliver it to the purchaser, he should be made to deliver it to the purchaser together with profits (between the time of sale and delivery) and if it is movable together with the price of profits arising [861] from it (such as milk in the case of a cow). Viṣṇu Dh. S. V. 128 prescribes a fine of 100 paṇas against the vendor. Kauṭ. III. 15 prescribes a fine of 12 paṇas against the vendor who after selling a thing does not deliver it and also against a buyer who having purchased does not take delivery of it, except when the thing itself is defective or is lost by act of king or theft or by fire or flood or unless the transaction was for inadequate price or brought about in distress. [862] If the article sold is not delivered by the vendor after demand by the vendee and it is injured, destroyed by fire or stolen, the loss will fall on the vendor (Nār. XI. 6, Viṣṇu Dh. S. V. 129, Yāj. II. 256). These rules apply when the vendor does not feel repentance for having sold the thing, but if he feels repentance then Manu VIII. 222 will apply and the vendor may pay back the price and recover the article within ten days [863] from the sale. Kāt. (684) provides the same rule. No one, either buyer or vendor, can rescind the sale after ten days and if any one uses force in

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860. विक्रीय पण्यं मूल्येन क्रेतुर्यो न प्रयच्छति । स्थावरस्योदयं दाप्यो जङ्गमस्य क्रियाफलम् ॥ नारद XI. 4. The मिता. on या. II. 254, विवादचन्द्र (p. 50), व्य. प्र. p. 342 and others read स्थावरस्य क्षयं and explain 'विक्रयानन्तरं जात उपभोगः क्षयः' (व्य. प्र.) and 'क्रिया वाहनादिका फलं दुग्धादि । समाहारोयम्' (विवादचन्द्र p. 50).

861. 'Udaya' in Nār. and Yāj. may mean either the profits from the property that the vendor enjoyed or the difference in price between the date of sale and the date of delivery if the property became less in value. This applies when both parties are inhabitants of the same place; but if the purchaser is one who comes from another country then he may be awarded the profit that he would have made in the other country by selling it if it had been delivered to him at once.

862. क्रीतमक्रीणतो या हानिः सा क्रेतुरेव स्यात् । विष्णुधर्मसूत्र V. 129; विक्रीय पण्यमप्रयच्छतो द्वादशपणो दण्डोऽन्यत्र दोषोपनिपाताविषह्येभ्यः ... क्रीत्वा पण्यमप्रतिगृह्णतो द्वादशपणो दण्डोऽन्यत्र दोषो ... ह्येभ्यः । कौटिल्य III. 15.

863. एवं धर्मो दशाहात्तु परतोऽनुशयो न तु । कात्या. 684 q. by स्मृतिच. II. p. 218, वि. र. p 192, परा. मा. III. p. 367.

recovering the article sold or bought after that period the king should fine him 600 paṇas. Manu VIII. 228 extends these rules about repentance and recovery within ten days to all transactions whatever. Kāt. (685) prescribes that the period of ten days for repentance is allowed to vendors and vendees only in the case of land, and that the period is 12 days when the parties to sale of land are sapiṇḍas of one another and that in other cases the period is even shorter.[864] Yāj. II. 257, Nār. XI. 7-8, Bṛ. (S. B. E. vol. 33 p. 350 verse 4) provide that when a vendor having sold a thing to one man for a price received sells it to another or having concealed the defects of an article sells it as free from defects he should be made to return double the price to the purchaser and a fine equal to double the price to the king.[865] The above rules apply where the purchaser has paid the price, but if there is a mere agreement and no price is paid, then the vendor or vendee is guilty of no wrong if he resiles from the bare agreement to sell or buy unless they have made an express stipulation that the agreement cannot be rescinded (Nār. XI. 10). When at the time of the agreement for sale, the vendee pays something by way of earnest, then if the sale goes off through the fault of the vendor, the latter has to return to the vendee double of the earnest;[866] but if the purchaser does not finally take it he loses the thing and also the earnest. Nār. XII. 1 prescribes that when a vendee after having purchased a thing for a price repents of the purchase that is the title of law called 'rescission of purchase.' Nār. XII. 2 prescribes that if the purchaser thinks that he has made a bad bargain he may return the thing purchased to the vendor on the same day in an undamaged condition (and may receive back the price paid); but if he returns it on the 2nd or 3rd day after the purchase (including the day of purchase) he will have to lose respectively one-thirtieth or one-fifteenth of the price and after the third day he cannot return the thing at all (Nār. XII. 3). But Yāj. II. 177 and Nār. XII. 5-6 lay down

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864. भूमेर्दशाहे विक्रेतुरायस्तत्क्रेतुरेव च । द्वादशाहः सपिण्डानामपि चाल्पमतः परम् ॥ कात्या. (685) q. by परा. मा. III. p. 364.

865. ज्ञात्वा सदोषं यत्पण्य विक्रीणीते विचक्षणः । तदेव द्विगुणं दाप्यस्तत्समं विनयं तथा ॥ बृह. q. by स्मृतिच. II. p. 220, परा. मा. III. p. 370.

866. सत्यङ्कारकृतं द्रव्यं द्विगुणं प्रतिदापयेत् । याज्ञ. II. 61; vide the मिता. thereon. सत्यङ्कारं च यो दत्त्वा यथाकालं न दृश्यते । पण्यं भवेन्निसृष्टं तद्दीयमानमगृह्णतः ॥ व्यास q. by स्मृतिच. II. p. 220, परा. मा. III. p. 370. क्लीबे सत्यापनं सत्यङ्कारः सत्याकृतिः स्त्रियाम् । अमरकोश, on which क्षीरस्वामी says 'अवश्यं मयैतद् विक्रेयमिति सत्यस्य करणं सत्यापनम्' and for सत्यङ्कार relies on पाणिनि VI. 3. 70 'कारे सत्यागदस्य'.

the following periods for examination of things purchased, viz. one, three, five, seven, ten days, half a month and one month respectively in the case of iron (and clothes), milch cattle, beasts of burden, jewels (precious stones, pearls and corals), all sorts of grain, a male slave and a female slave. It must be supposed that these verses contain exceptions to the general rule in Manu VIII. 222 cited above. Kaut. (III. 15) allows only one night, three nights, five nights and seven nights for repentance to traders, husbandmen, cowherds, the mixed castes and higher castes and provides that where the articles sold are perishable a very short time only may be allowed. The above rules apply only when the purchaser made no examination at the time of purchase. Nār.[867] XII. 4 and Bṛ. (S. B. E. vol. 33 p. 350 verse 3) recommend that a purchaser should himself closely examine an article before buying it and also show it to others in order to find out its defects and good qualities and provide that when he has approved of an article after close examination he cannot return it to the vendor. Vyāsa provides that hides, fuel, bricks, yarn, grain, intoxicants, fluids, gold, inferior metals (like lead and tin) and other wealth should be carefully examined then and there i. e. when once bought after close examination none of these can be returned even if some defect[868] is found therein. Nār. (XII. 5–6) cited above contains exceptions to this. Nār. XII. 7 gives an example of a purchase being not liable to be rescinded when a defective article is purchased with open eyes viz. a worn garment which is soiled with dirt and is in ragged condition cannot be returned to the vendor if it was in that state at the time of the purchase i. e. the maxim '*caveat emptor*' applies. If a purchaser does not take delivery of the thing sold to him, the vendor may sell it again to another[869] and if the thing is lost through act of God or the king the loss falls on the buyer alone (Yāj. II. 255, Nār. XI. 9). Kāt. (692) provides[870] that what has been sold by a lunatic or an intoxicated

867. परीक्षेत स्वयं पण्यमन्येषां च प्रदर्शयेत् । परीक्षितं बहुमतं गृहीत्वा न पुनस्त्यजेत् ॥ बृह. q. by स्मृतिच. II. p. 220, वि. र. p. 198.

868. चर्मकाष्ठेष्टकासूत्रधान्यासवरसस्य तु । वसुकुप्यहिरण्यानां सद्य एव परीक्षणम् ॥ व्यास q. by स्मृतिच. II. 220, वि. र. p. 198 (reads तृणकाष्ठ and वस्त्रकुप्य), व्य. प्र. p. 339.

869. Compare section 46 of the Indian Sale of Goods Act (III of 1930) for the vendor's right of resale and sec. 26 about the person who has to bear the loss of goods.

870. मत्तोन्मत्तेन विक्रीतं हीनमूल्यं भयेन वा । अस्वतन्त्रेण मुग्धेन त्याज्यं तस्य पुनर्भवेत् ॥ कात्या. q. by स. वि. p. 312; वि. चि. p. 57, व्यव. नि. p. 354 and व्य. प्र. p. 345 ascribe it to बृह.

person or through intimidation or for an inadequate price or by one who is dependent or by an idiot should be relinquished by the purchaser; it still belongs to the seller. Kāt. (705–706) lays down a novel rule to find out what is adequate or inadequate price. What[871] is decided by the neighbours assembled together, who know (the land &c. and its value) and who are afraid of committing sin, as the price of fields, gardens, houses and the like, of bipeds and quadrupeds, is declared to be the proper price; a price which is less or more than it by one-eighth is declared to be improper; what is sold for an improper price may be annulled even after a hundred years. Kāt. (704) states that when the owner of a field absconds together with the surety[872] for the payment of the land tax, the judges of the court may order a sale for recovery of the tax and that such a sale may be set aside up to ten years and a compromise or exchange up to three generations, if it is inequitable. Bhāradvāja provides that when taxes are not paid both by the tax-payer and his surety even when called upon to do so, then the king may order a charge on the land or sale of the land.

Uktalābha is defined as a conditional sale, where a man borrows only a portion of the proper price of a land and stipulates that he would return the money on a certain day and that if he did not do so his ownership over the land would come to an end.[873] Kāt. (711) adds that a sale of the uktalābha kind will be valid if it is for more than half (the proper price of the land), provided more than ten years have elapsed (after

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871. समवेतैस्तु सामन्तैरभिज्ञैः पापभीरुभिः । क्षेत्रारामगृहादीनां द्विपदां च चतुष्पदाम् । कल्पितं मूल्यमित्याहुर्भागं कृत्वा तदष्टधा । एकभागातिरिक्तं वा हीनं वानुचितं स्मृतम् ॥ समाशतमतीतेऽपि सर्वं तद्विनिवर्तते । हीनमूल्यं तु तत्सर्वं कृतमप्यकृतं भवेत् । कात्या. q. by स. वि. p. 325, व्यव. नि. p. 352; vide बृह. q. by स. वि. p. 326 'मूल्यं दशाधिकं न्यूनं मूल्यस्यानुचितं स्मृतम् । क्रयसिद्धिस्तु नैव स्याद्वत्सराणां शतैरपि ॥'

872. पलायिते तु करदे करप्रतिभुवा सह । करार्थं करदक्षेत्रं विक्रीणीयुः सभासदः ॥ सन्धिश्च परिवृत्तिश्च विषमा या त्रिभोगतः । आज्ञयापि क्रयश्चापि दशाब्दं विनिवर्तयेत् ॥ कात्या. and वृद्धकात्या. respectively q. by स. वि. pp. 324 and 320; व्यव. नि. p. 348 reads slightly differently; आज्ञाधिस्तत्क्रयश्चैव करे दण्डो विधीयते । उभावन्यत्र न स्यातामिति धर्मविदो विदुः ॥ भारद्वाज q. by स. वि. p. 324.

873. किञ्चिच्च द्रव्यमादाय काले दास्यामि ते क्वचित् । नो चेन्मूलमिदं त्यक्तं केदारस्येति यः क्रयः । स उक्तलाभ इत्युक्त उक्तकालेऽप्यनर्पणात् । भारद्वाज q. by व्यव. नि. p. 351, स. वि. p. 324. This is similar to the mortgage by conditional sale defined in section 58 of the Transfer of Property Act.

the period fixed for repayment). An *avakraya*[874] becomes valid after possession for over three generations and a (regular) purchase by mutual agreement becomes valid at once. Kāt. (712) further[875] prescribes that the unpaid purchase money carries compound interest after demand if no time is fixed for payment, but, if a time is fixed, then only the balance has to be paid up to the end of that period. Bṛ. provides that in all sales, the sale deed should mention the wells and trees (on the land), the water and ways and that the crops, trees and fruits, wells, tanks and house standing on the land sold would belong to the vendor if they are not put down in the deed of sale.[876] According to Hārīta the rules of sales are to be extended to exchanges.[877]

From the Rājataraṅgiṇī VI. 41 it appears that a fraudulent purchaser, who, by means of the heavy bribe of 1000 *dīnāras*, induced the officially authorized scribe to include a well in the sale of a house when it was intended to be excluded from it, was banished from the country by the king, his property being confiscated and given over to the cheated vendor.

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874. अर्धाधिके क्रयः सिध्येत्कुलाभो दशाब्दिकः । अवक्रयस्त्रिभोगेन सद्य एव तु विक्रयः ॥ कात्या. (711) q. by व्यव. नि. p. 349 (which reads ऋणक्रिया at the end, that makes hardly any sense) and स. वि. p. 326. The word अवक्रय is explained in various ways. The Mit. on Yāj. II. 238 defines it as a transaction whereby a bailee (e. g. a washerman) transfers an article bailed to him (for washing &c.) to another for hire. Pāṇini IV. 4. 50 employs the word 'avakraya', but the Siddhāntakaumudī explains it as the due to be recovered by a king from a market (or the like). Gaut. XII. 39 employs the word 'avakrīta' which is explained by Haradatta as meaning 'what is purchased, but the price of which is unpaid or only partly paid'. This last seems to be the sense intended by Kāt. who provides that a sale of land, the price being wholly or partly unpaid, would become indefeasible only after enjoyment for three generations. सुमन्तु as quoted in S. V. p. 321 defines अवक्रय as 'अर्धदत्तमदत्तं तु क्रयमाहुरवक्रयम् । अवक्रयो निवर्तेत यदि काले न दीयते ॥'

875. मूल्यात्स्वल्पप्रदानेपि क्रयसिद्धिः कृता भवेत् । चक्रवृद्ध्या प्रदातव्यं देयं तत्समयाहृते ॥ कात्या. 712 q. by स. वि. p. 327.

876. विक्रयेषु च सर्वेषु कूपवृक्षादि लेखयेत् । जलमार्गादि यत्किञ्चिदन्यच्चैव बृहस्पतिः ॥ क्षेत्राद्युपेतं परिपक्वसस्यं वृक्षं फलं वाप्युपभोगयोग्यम् । कूपं तडाकं गृहमुक्तं च क्रीतानि विक्रेतुरिदं वदन्ति ॥ बृह. q. by व्यव. नि. p. 349, स. वि. p. 326. Compare sec. 8 of the Transfer of Property Act (Act. IV. of 1882) as to what passes on a sale. The व्यव. नि. p. 349 explains as एष्वलिखितेषु क्रेतुर्न भवन्तीत्यर्थः.

877. मत्तमूढानभिज्ञातभीतैर्विनिमयः कृतः । यच्चाप्यनुचितमूल्यं स्यात्सर्वं तद्विनिवर्तते ॥ हारीत q. by स. वि. p. 326. Compare sec. 118 of the Transfer of Property Act.

The Vyavahāranirṇaya, after quoting Bṛ. and Vyāsa, very lucidly explains what is meant by sale, purchase, exchange &c. Gold and the like which a man desires to render or pay is called price, while land, house and the like are said to be 'paṇya' (saleable thing). Purchase means acceptance of a thing preceded by the offering of a price (either paid or agreed to be paid); sale is the acceptance of a price preceded by the offering of a saleable thing. *Parivṛtti* or *parivartanā* is the acceptance of an article for an article of the same kind; if there is a disparity in value between the two articles exchanged the exchange is called '*avakraya*'; when there is an exchange of two articles of different kinds but of the same value it is called *vinimaya*.[878] The Vyavahāranirṇaya makes elaborate provisions for sale of land at the order of the king for non-payment of land tax. It quotes Prajāpati (p. 350) to the effect that the purchaser at such a sale must offer half or at least one-fourth of the real price of the field and that the original owner could get back his property sold for the royal dues by paying the full price to the purchaser up to three generations. Other elaborate rules on the same subject are passed over here for reasons of space. These provisions indicate that ownership in cultivated fields belonged to individuals and that the State had only the right to levy taxes. Vide H. of Dh. vol. II. pp. 865–869 and Kāt. quoted above (on p. 196) for a discussion of the theory of the State's ownership of all lands. Taking into consideration the Pūrvamīmāṁsā texts, the Vyavahāramayūkha and the verses of Kāt. and others it appears that the State was deemed to be the owner of all lands as a general proposition, but that where individuals or bodies of persons had been in long possession of lands that they cultivated, the ownership of the State was qualified and restricted only to the recovery of a tax or share

878. स (बृहस्पतिः) एवाह—आत्मीयस्य विजातीयं द्रव्यमादाय चान्यतः । क्रयोऽस्यस्य (क्रयोऽर्थस्य ?) परित्यागः साम्ये तु परिवर्तना ॥ इति । व्यासः । आत्मीयस्य विजातीयं द्रव्यमादाय चान्यतः । क्रयो मूल्यस्य संत्यागः स्वत्वहेतुः परस्परम् । परिवृत्तिः सजातीयद्रव्ये विनिमयः स्मृतः । वैषम्ये विक्रयः प्रोक्तो मिश्रे विनिमयः स्मृतः ॥ इति । स्वत्वहेतुफलजनका एते क्रयविक्रयपरिवर्तनविनिमया इति । तत्र लोके जिहासितं सुवर्णादि मूल्यमुच्यते । उपादित्सितं क्षेत्रगृहादि पण्यमित्युच्यते । तत्र मूल्यत्यागपूर्वकपण्यस्वीकारः क्रयः । पण्यत्यागपूर्वको मूल्ये स्वत्वजनको मूल्यस्वीकारो विक्रयः । सजातीयत्यागपूर्वकः सजातीयस्य स्वीकारः परिवर्तना । वैषम्ये सति परिवर्तनैवावक्रयशब्देनोच्यते । विजातीयसजातीयमिश्रपरिवर्तनायां विजातीयाधिक्येऽवक्रयो भवति, सजातीयाधिक्ये परिवर्तना भवति । सजातीयविजातीययोः साम्ये विनिमयो भवति । व्यव. नि. pp. 347–348. The definition of sale given by the Vyavahāranirṇaya looks quite modern. Compare sec. 4 of the Indian Sale of Goods Act (III. of 1930).

of crops and that individuals and groups that had cultivated lands in their possession were regarded practically as owners of the land subject to the liability to pay land tax and to the right of the State to sell the land for non-payment of tax. The Vyavahāranirṇaya quotes Bṛ. and another smṛti text that śūdras, persons excommunicated for grave sins (*patita*), cāṇḍālas and desperate characters cannot be allowed to possess the lands of a brāhmaṇa by sale, partition or in lieu of wages;[879] the same work further quotes Vyāsa, Bhāradvāja and Bṛ. that when land is sold there is a right of pre-emption in favour of full brothers, sapiṇḍas, samānodakas, sagotras, neighbours, creditors and one's co-villagers in order.[880]

Gifts of immovables were looked upon in very ancient times with disfavour, though they were made even in the times of the Upaniṣads. Vide H. of Dh. vol. II. pp. 740–41. But sales of land must have been rarer still in ancient times owing to the patriarchal and joint family systems. The Mit. on Yāj. II. 114 quotes a verse forbidding the sale of immovable property;[881] but sales of lands are mentioned in many copperplate grants. Vide Pahārpur plate grant of Gupta year 159 i. e. 478–79 A. D. in E. I. vol. 20 p. 59 (where one kulyāvāpa of land is stated to have been sold for two *dīnāras* to a brāhmaṇa and his wife named Rāmī by the city council for the provision of the worship with sandal-wood paste &c. of the divine *arhats* at a *vihāra*), E. I. vol. 17 p. 345 (grant of the time of Kumāragupta I in Gupta year 113), the Damodarpur plates (E. I. vol. 15 p. 113), Faridpur plates (Ind. Ant. vol. 39 p. 193), E. I. vol. 18 p. 74. From these records of the 5th and 6th centuries A. D. it appears that land was owned by private individuals or by

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879. शूद्राश्च पतिताश्चैव चण्डालाश्चाततायिनः । नार्हन्ति विप्रक्षेत्रस्य क्रयविक्रयकर्मणि ॥ बृह.; विभागेन क्रयेणापि वेतनग्रहणेपि वा । शूद्रः केनापि रूपेण न विप्रक्षितिमर्हति ॥ स्मृत्यन्तर q. by व्यव. नि. p. 354. With these provisions prescribed at least 1500 years ago one may compare the South African legislation passed in the midst of the Second World War (alleged to be fought for different kinds of freedoms) against Indians preventing the purchase by them of lands in areas reserved for Whites.

880. व्यासः । ज्ञातिसामन्तधनिकाः क्रमेण क्रयहेतवः । तत्रासन्नतराः पूर्वं सपिण्डाश्च क्रये मताः ॥ बृहस्पतिः । सोदराश्च सपिण्डाश्च सोदकाश्च सगोत्रिणः । सामन्ता धनिका ग्राम्याः सर्वेते भूक्रये मताः ॥ q. by व्यव. नि. pp. 355–56.

881. स्थावरे विक्रयो नास्ति कुर्यादाधिमनुज्ञया । q. by मिता. on या. II. 114.

joint families or by the village community or by the king and there was a fixed procedure when land was to be sold, that the purchaser approached the District Officers who consulted the *pustapālas* that kept a record of titles and that the villagers and headmen were consulted and asked to mark off the land to be sold. It appears that the smṛtis recommended that sales should be clothed in the formalities of gifts, probably because gifts were frequent and sales were not. A smṛti quoted by the Mit. (on Yāj. II. 114) states 'land passes (i. e. is transferred) with the assent of the villagers, the agnatic relations, the neighbours, the co-sharers and with the offering of gold and water.' The Mit. explains that these[882] are not absolutely necessary formalities of a sale, but that they are recommended for the sake of greater caution and convenience, that the assent of the villagers is to be secured for the publication of the transaction of sale, as a text says that acceptance, particularly of immovables, should be made openly, that the neighbours' assent should be secured for preventing boundary disputes, that the assent of agnates and co-sharers is desired for making it easy to complete the transaction, that it does not follow that without the assent of these the sale of land is not valid or complete. Water and gold are to be offered because gifts being highly commended, a sale should be clothed outwardly with the same formalities. Vide Dr. P. N. Sen's 'Hindu Jurisprudence' pp. 76–78 for the opposite procedure of the ancient Roman Law that gifts were to be clothed with the formalities of sale. For water and gold in the case of gifts vide above under *dattāpradānika*.

Svāmipālavivāda (disputes between the owner of cattle and herdsman who is engaged to look after them). In ancient times this must have been a prominent source of litigation in a predominantly agricultural country like India. Nār. appears to have included this title under *vetanasyānapākarma*. Yāj. II. 164, Nār. IX. 11 provide that the cowherd has to bring back to the owner in the evening the cows (and other domestic animals) handed over to him in the morning by

882. यद्यपि–स्वग्रामज्ञातिसामन्तदायादानुमतेन च । हिरण्योदकदानेन षड्भिर्गच्छति मेदिनी ॥ इति तत्रापि ग्रामानुमतिः-प्रतिग्रहः प्रकाशः स्यात् स्थावराय (स्थावरस्य?) विशेषतः इति स्मरणात् व्यवहारप्रकाशनार्थमेवापेक्ष्यते न पुनर्ग्रामानुमत्या विना व्यवहारासिद्धिः। ...... विक्रयेपि कर्तव्ये सहिरण्यमुदकं दत्त्वा दानरूपेण स्थावरविक्रयं कुर्यादित्यर्थः । मिता. on या. II. 114; प्रतिग्रहः &c. is या. II. 176.

the owner, after grazing them in the pastures and making them drink water. Manu VIII. 230 says that during the day the responsibility for the safety of the cattle rests on the herdsman and during the night on the owner provided they are in the latter's house. When there is no express agreement as to wages Nār. IX. 10 and Bṛ. (S. B. E. 33 p. 346 verse 19) prescribe that a cowherd[883] will get as his wages all the milk of the cows tended by him on every eighth day plus a heifer (two years old) every year out of every one hundred cows tended by him or a milch cow with her calf every year for every two hundred cows looked after by him. Manu VIII. 231 provides another method when no wages are fixed by agreement viz. a hired herdsman, who is paid with milk, may milk as hire the best cow out of ten with the consent of the owner. It is the duty of the cowherd to struggle as much as in him lies to protect the cows from accidents and if he is unable to do so he must quickly inform the owner (Nār. IX. 12). Bṛ. (S. B. E. 33 p. 346 verse 20) states[884] that the cowherd shall save cattle from the danger of worms (or reptiles), robbers, tigers and from caverns and pits and that he should try to protect them to the best of his ability, should call out for help or inform his master. If the herdsman does not struggle to protect the cows, nor raise a hue and cry nor inform his master he must make good the value of the cow lost and must pay a fine to the king (Nār. IX. 13). Manu VIII. 232 and 235, Yāj. II. 164-165, Viṣṇu Dh. S. V.[885] 137-138, Nār. (IX. 14-15) provide that if a cow or other domestic animal strays or is killed by worms (or reptiles) or slain by dogs (and wild animals) or dies by falling into a pit or by any negligent act of the herdsman, he himself shall make good the loss, if he did not exert himself to prevent this happening or if goats and sheep are surrounded by wolves and carried away while the herdsman does not hasten to their help he shall bear the responsibility for the loss. In these cases the herdsman has also

883. तथा धेनुभृतः क्षीरं लभेताष्टमेऽह्न्यखिलम्। बृह. q. by the स्मृतिच. II. p. 207, व्य. प्र. p. 346.

884. कृमिचोरव्याघ्रभयाद्दरीश्वभ्राच्च पालयेत्। व्यायच्छेच्छक्तितः क्रोशेत्स्वामिने वा निवेदयेत्॥ बृह. q. by वि. र. p. 172, व्य. प्र. p. 347; the स्मृतिच. II p. 208 ascribes it to नारद.

885. दिवा पशूनां वृकाद्युपघाते पाले त्वनायति पालदोषः। विनष्टपशुमूल्यं च स्वामिने दद्यात्। विष्णु. V. 137-138.

to pay a fine of 12½ paṇas[886] to the king (Yāj. II. 165). Āp. Dh. S. II. 11. 28. 6 makes[887] the herdsman liable to pay the price if an animal in his charge dies or is lost (by theft &c.). Manu VIII. 233, 236, Nār. IX. 16, Vyāsa state exceptions to the above viz. where an animal is carried away[888] by robbers though the herdsman raised a cry, he would not be liable to make good the loss provided he gave information to his master at the proper time (immediately after the animal is carried away) and proper place; or when the herdsman himself is seized or the village is attacked or the country is invaded, the herdsman would not be liable for loss or seizure of any animal under his charge; and also where, while the herd is grazing in a proper order near a forest, a wolf suddenly kills an animal. Manu VIII. 234, Nār. IX. 17 state that when cattle die through act of God or king or die without any fault of his while in charge of a herdsman, he has to free himself from liability or from the suspicion of himself having[889] carried away surreptitiously the animal by producing before his master their ears, skin, tails, bladders, tendons and yellow bile or by showing their limbs (viz. their characteristic marks). Vyāsa states that if a herdsman, who has received his wages, abandons cattle in an untenanted forest and moves about in the village he should be fined by the king.[890]

Yāj. II. 166 provides that a portion of land should be set apart at the discretion of the villagers or that of the king as pasture for cows. Manu VIII. 237, Yāj. II. 167 prescribe

886. अर्धत्रयोदश in या. II. 165 means, acc to the Mit., Sm. C. II. p. 208 and अपरार्क p. 773, 13½, while परा. मा. III. p. 375 and व्य. प्र. p. 348 say that it means 12½; 'अर्धत्रयोदशपणः अर्धरहितत्रयोदशपणः सार्धद्वादशपण इति यावत् । ता-(क्त?)स्तृतीयपूर्वपदाः समानाधिकरणेन समस्यन्ते उत्तरपदलोपश्च इति वार्तिकादुत्तरपदलोपी कर्मधारयः। यत्तु केनचिदर्धाधिकत्रयोदशपणो दण्ड इति व्याख्यातं तत्सार्धद्विमात्रादिषु अर्धत्रिमात्रादिमहाभाष्यकारशब्दप्रयोगदर्शनादुपेक्ष्यम् ।' व्य. प्र. p. 348. The वार्तिक seems to be सिद्धं तु समानाधिकरणाधिकारे क्तस्तृतीयापूर्वपद उत्तरपदलोपश्च on पा. II. 1. 34 (Kielhorn's ed.), where the महाभाष्य cites दध्योदन (दध्ना उपसिक्तो दध्युपसिक्त ओदनः) as an example. Vide p. 140 and note 182 above on अर्धतृतीय.

887. अवरुध्य पशून् मारणे नाशने वा स्वामिभ्योऽवसृजेत् । आप. ध. सू. II. 11. 28. 6.

888. पालग्राहे ग्रामघाते तथा राष्ट्रस्य विभ्रमे । यत्प्रणष्टं हृतं वा स्यान्न पालस्तत्र किल्बिषी । व्यास in स्मृतिच. II. p. 207, वि. र. p. 172, अपरार्क p. 772.

889. मृतेषु च विशुद्धिः स्याद्वालशृङ्गादिदर्शनात् । नारद IX. 17.

890. गृहीतमूल्यो गोपालस्तांस्त्यक्त्वा निर्जने वने । ग्रामचारी नृपैर्दाप्यः शलाकी च वनेचरः ॥ व्यास q. by व्य. प्र. p. 347. शलाकी means 'barber'.

that on all sides round a village, a *kharvaṭa* and a town an uncultivated space for pastures (between it and the fields) shall be kept respectively of 100, 200, 400 *dhanus*[891] in extent. Kāt. (666) prescribes that the owner of a field (which is near a forest) should construct a high paling before the crops have grown; for animals (or deer) when they have once tasted the sweet[892] (crops) can be warded off with difficulty. Manu VIII. 239 = (Matsya 227. 25), Nār. XIV. 41 prescribe that a hedge should be constructed for a field that is near a public way so high that a camel cannot look inside over it or a horse or cattle cannot jump over or so thick that a dog or boar should not be able to thrust its head inside it through holes. Manu VIII. 238 (= Matsyapurāṇa 227. 26), Yāj. II. 162, Nār. XIV. 40 provide that if a field situated near a village or a pasture or near a public road is not protected by a hedge and cattle straying into it cause loss, the herdsman is not to be held guilty. It is provided by Āp. Dh. S. II. 11. 28. 5, Manu VIII. 240, Nār. XIV. 28, Kāt. 664–665 that if cattle enter into fields,[893] parks or pastures that are situated near a village or a public road and are enclosed by a hedge, they may be seized or beaten off, the herdsman is to be fined (a hundred paṇas). Yāj. II. 159–161, Manu VIII. 241, Nār. XIV. 28–29, Kāt. 667 and others lay down that where cattle enter fields (not near a village or road) and cause loss, the herdsman is to be fined or whipped, the owner of the cattle is to make good the loss and

891. A धनुः is 4 cubits (or about 6 feet). Manu VIII. 237 ordains having a space of 300 *dhanus* round a city; it also says that the space round a village for pastures should be three throws of *śamyā*. Āp. Dh. S. I. 3. 9. 6 and 23 employ the expression शम्याप्रास for stating distance. शम्या means yoke-pin (युगकीलक). Vide p. 145 note 185 above for *dhanus* and other measures of distance. In E. I. vol. I. pp. 154–155 a पारमेश्वरीय हस्त (the king's hand) is mentioned in an inscription dated *saṁvat* 933 at Gwalior. A दण्ड was 4 हस्तs but there were दण्डs of 7 or 10 hastas. Vide मिता. on या. II. 106. It was but natural that in ancient times man relied upon his own fingers or hand or height as a measure of length. Vide H. of Dh. vol. II. p. 209 n. 485 and n. 2021 (for हस्त, दण्ड and निवर्तन), p. 1034 (for Vedi being as much in length as the height of the sacrificer) and puruṣa as a measure of length in तै. सं. V. 2. 5. 1 and कात्यायनश्रौत 16. 8. 21–25. Vide also H. of Dh. vol. II. p. 989 n.

892. अजातेष्वेव सस्येषु कुर्यादावरणं महत्। दुःखेनेह निवार्यन्ते लब्धस्वादुरसा मृगाः। कात्या. 666 q. by अपरार्क p. 770, स्मृतिच. II. p. 209.

893. क्षेत्रारामविवीतेषु गृहेषु पशुवाटिषु। ग्रहणं तत्प्रविष्टानां ताडनं वा बृहस्पतिः। कात्या. 664 q. by स्मृतिच. II. 208, वि. र. p. 241; छित्वा व्रजमाविनः कर्शयेत् पशून्। आप. ध. II 11. 28. 5.

pay the fine prescribed and the fines vary e. g. Yāj. II. 159 prescribes fines of 2, 4 and 8 māṣas respectively when a goat or a cow or a she-buffalo strays and causes loss of crops, while Kāt. (667) prescribes only ¼ paṇa in the case of cows and sheep and ½ in the case of she-buffaloes. Vide Gaut. XII. 19–22 and Kauṭ. III. 10 also. Those who purposely set cattle to eat or destroy crops were to be punished as thieves (Nār. XIV. 34).

Ancient India entertained tender feelings for certain animals and in certain circumstances. Nār. XIV. 30, Yāj. II. 163, Manu VIII. 242, Kauṭ. III. 10[894] and Uśanas provide that cows within ten days after calving, a stud bull, a horse, an elephant, animals let loose in honour of ancestors or deities, and cattle that have strayed from the herd or that have no herdsman to look after them and have met with an accident are to be warded off when causing harm to crops, but the owner is not to be fined. Uśanas[895] states that the reason for this leniency is that horses and elephants are protectors of people. Aparārka (p. 771) explains that this exemption applies only to the king's horses and elephants. Uśanas adds that (owners of) cows should not be fined when they cause some loss at the time of festivals and śrāddhas. The great veneration for cows led Uśanas to lay down that he who requires the owner of a cow to re-imburse the loss of crops that are eaten up or destroyed by a cow will find that his *pitṛs* and the gods do not receive the offerings made[896] by him. This is explained by the Par. M. III. p. 385 as referring to crops in fields near a village not enclosed by a hedge and by the Madanaratna to crops eaten at the time of śrāddha. Bṛ., Yāj. II. 161 and Nār. XIV. 38 require the owner of the cow to re-imburse the owner of the crops for the loss as settled by the neighbours. Vide under 'steya' for cases in which there is no offence of theft even if a person takes certain things belonging to another without his permission.

894. ग्रामदेववृषा वा अनिर्दशाहा वा धेनुरुक्षाणो गोवृषाश्चादण्ड्याः । अर्थशास्त्र III. 10.

895. अदण्ड्या हस्तिनो ह्यश्वाः प्रजापाला हि ते स्मृताः । अदण्ड्यौ काणकुब्जौ च ये शश्वत्कृतलक्षणाः ॥ अदण्ड्यागन्तुकी गौश्च सूतिका चाभिसारिणी । अदण्ड्याश्चोत्सवे गावः श्राद्धकाले तथैव च ॥ उशनस् q. by मिता. on या. II. 163, वि. र. p. 240. Compare नारद XIV. 31–32 where two half verses are the same as in Uśanas. Manu VIII. 242 mentions देवपशून्, which Sm. C. II. p. 212 explains as 'देवपशवो हि देवताप्रतिमादीनां क्षीरस्नानाद्यर्थं तदुद्देशेन दत्ताः.'

896. गोभिर्विनाशितं धान्यं यो नरः प्रतियाचते । पितरस्तस्य नाश्नन्ति नाश्नन्ति त्रिदिवौकसः ॥ उशनस् q. by अपरार्क p. 770, वि. र. p. 232.

CHAPTER XXII

SĪMĀVIVĀDA (boundary disputes).

This is called *kṣetrajavivāda*[897] (disputes relating to fields) by Nārada XIV. 1, who defines it as ' dispute with regard to land in which questions about dikes or embankments, the boundaries of fields, ploughed land and fallow land have to be decided.' Nārada's idea appears to be that the word 'sīmāvivāda' in Manu is only illustrative and is a compendious way of mentioning disputes about land in general. According to Kāt. (732) there are six causes[898] of land disputes viz. claiming more land, claim that a person is entitled to less than he possesses, claim to a share, denial of a share, seizing possession when previously there was none, boundary. In all these cases boundaries have directly or indirectly to be settled and therefore all these are included under the topic of *sīmāvivāda*. A boundary dispute may relate to the boundaries of a district (janapada), a village, a field and a house. Boundaries, acc. to Nār., may be of five kinds.[899] They are described as follows: *dhvajinī* is what is indicated by trees which are like a flagstaff. Manu (VIII. 246–247) prescribes that trees such as aśvattha, the silk cotton, śāla, tāla (palmyra palm), that have milky juice (like udumbara) should be planted to indicate boundaries and also bamboo clumps, bushes, reeds &c. A *matsyinī* (lit. having fish) boundary is provided by rivers flowing naturally and full of fish and tortoises or by tanks and reservoirs of water (Manu VIII. 248). A *naidhānī* boundary is one indicated by concealed signs (just as nidhāna i. e. treasure is concealed in the earth), such as pots filled with chaff, coal, bricks, bones and similar things that the earth does not corrode

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897. सेतुकेदारमर्यादाविकृष्टाकृष्टनिश्चये। क्षेत्राधिकारो यस्तु स्याद्विवादः क्षेत्रजस्तु सः॥ नारद XIV. 1. वि. र. p. 201 takes केदारमर्यादा as one word, while व्य. प्र. p. 353 holds *kedāra* and *maryādā* separate. विकृष्टो लाङ्गलप्रहतो देशः, अकृष्टस्तद्रहितः। व्य. प्र. p. 353.

898. आधिक्यं न्यूनता चांशे अस्तिनास्तित्वमेव च। अभोगभुक्तिः सीमा च षड्भूवादस्य हेतवः॥ कात्या. 732 q. by मिता. on या. II. 150, वि. र. p. 201, अपरार्क p. 759, व्य. प्र. p. 353. Vide the मिता. and व्य. प्र. for explanations.

899. ध्वजिनी मत्स्यिनी चैव नैधानी भयवर्जिता। राजशासननीता च सीमा पञ्चविधा स्मृता॥ नारद q. by मिता. on या. II. 150.

and are buried inside the earth. Manu (VIII. 250-251) enumerates those objects that should be buried in the earth, which would serve to indicate the boundaries of a village or field and which are therefore called concealed (*upacchanna*) by him. A *bhayavarjitā* (free from danger) boundary is settled by the agreement of the parties. The fifth kind is the one that is laid down by order of the king. Bṛ. (S. B. E. 33 p. 351 verse 2) prescribes[900] that at the time of founding a village definite boundaries should be erected or constructed by means of visible or patent (*prakāśa*) and concealed (upāṁśu or upacchanna) signs and the Sm. C. II. 228 explains that a row of big stones should be employed to indicate the boundary. Bṛhaspati (S. B. E. vol. 33 p. 351 verses 3-7) states what patent and concealed boundary marks should be and requires elderly persons to point them out to youths and children who in their turn when old are to point out the boundaries to other youths and in this way traditional knowledge of boundaries may be kept up. Manu (VIII. 252-253) states that in disputes boundaries should be settled in accordance with the visible and concealed signs described above, by reliance on long former enjoyment and by the constant flow of water and that if there be doubt even after observing the signs then the dispute has to be decided on the evidence of witnesses. Witnesses could either depose to the marks of boundaries or to the boundaries themselves. Those who could not point out the marks but were to define the boundaries themselves were to follow a certain procedure. Manu VIII. 254 states that the witnesses should be asked about the marks of boundaries in the presence of the litigating parties and groups (or families) of the villagers. The witnesses on being asked were to trace, point out and settle the boundary unanimously, being clad in red garments, wearing red chaplets and being exhorted to depose truly by their spiritual merit[901] and carrying clods of earth on their heads, by reference to mounds or depressions, coals, bones and chaff (buried underground,

900. निवेशकाले कर्तव्यः सीमाबन्धाविनिश्चयः । प्रकाशोपांशुचिह्नैश्च लक्षितः संशयापहः ॥ बृह. q. by स्मृतिच. II p. 227, which says: ग्रामादिप्रवेशकाले तत्सीमानियामकस्थूलगुडकः प्रकाशगुप्तलिङ्गोपेतः सीमासन्धौ स्थापनीय इति ।

901. On सुकृतैः शापिताः स्वैः स्वैः, वि. र. p. 211 remarks: धर्मा अस्माकं क्षीणा भवन्ति यदि मिथ्या वदाम इति वादिता इत्यर्थः ; सीमाविवादं ग्रामयोरुभयोः सामन्ताः पञ्चग्रामी दशग्रामी वा सेतुभिः स्थावरैः कृत्रिमैर्वा कुर्यात् । कर्षकगोपालवृद्धकाः पूर्वभुक्तिका वा, अबाह्याः सेतूनामभिज्ञा बहव एको वा निर्दिश्य सीमासेतून् विपरीतवेषाः सीमानं नयेयुः । क्षेत्रविवादं सामन्तग्रामवृद्धाः कुर्युः । अर्थशास्त्र III. 9.

in a vessel), embankments, anthills, platforms of stones or bricks (Manu VIII. 255, 256, Yāj. II. 151, Nār. XIV. 4–6). Vas. 16. 13, Kauṭ. III. 9, Yāj. II. 150, Manu VIII. 258, 260, Nār. (XIV. 2–3) prescribe that on failure of witnesses of the adjoining villages, neighbours (sāmanta),[902] old men, cowherds husbandmen who plough the fields near the one in dispute, hunters, fowlers, fishermen, snake catchers and foresters should settle the disputed boundary in the presence of the king. The Mit. on Yāj.[903] II. 153 quotes Kāt. (743–745, 51) to show that witnesses were divided into *sāmanta*, *maula*, *vṛddha* and *uddhṛta*, each preceding group being superior to the succeeding. The Mit. further says that the neighbours as witnesses are to be arranged in the form of the layers of the petals of a lotus viz. the nearest ones (*saṁsaktaka*) are those most preferred, (but if this group has faults) then a second but a more removed group and then a third group still more remote may be examined. Śaṅkha-Likhita and Vas.[904] 16. 13–15 prescribe that in boundary disputes the decision depends on neighbours, in the case of conflict of witnesses on documents and then on the old men in the town or village and the guilds. Yāj. II. 152 and Manu VIII. 258 require that the neighbours who are to settle the boundary should be four, eight or ten (even in number) and inhabitants of the same village (if possible). Bṛ. (S. B. E. 33 p. 352 verse 14) requires that the witnesses[905] should know the source of title (to the disputed land), the measurement (in *nivartanas*, *daṇḍas* &c.), the length of enjoyment or possession, the names of persons (in possession) and the characteristic geography or lie of the land. The general rule was (as stated by Nār. XIV. 9)

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902. समन्ताद्भवाः सामन्ताः । चतसृषु दिक्ष्वनन्तरग्रामादयस्ते च प्रतिसीमं व्यवस्थिताः–ग्रामो ग्रामस्य सामन्तः क्षेत्रं क्षेत्रस्य कीर्तितम् । गृहं गृहस्य निर्दिष्टं समन्तात् परिरभ्य हि ॥ इति कात्यायनवचनात् । ग्रामादिशब्देन तत्स्थाः पुरुषा लक्ष्यन्ते । मिता. on या. II. 151.

903. तेषामभावे सामन्तमौलवृद्धोद्धृतादयः । स्थावरे षट्प्रकारेऽपि कार्या नात्र विचारणा । कात्या. 737, q. by मिता. on या. II. 152, वि. र. 206.

904. गृहक्षेत्रविरोधे सामन्तप्रत्ययः । सामन्तविरोधे लेख्यप्रत्ययः । प्रत्यभिलेख्यविरोधे ग्रामनगरवृद्धश्रेणीप्रत्ययः ॥ वसिष्ठ 16. 13–15 ; गृहक्षेत्रयोर्विरोधे सामन्तप्रत्ययः । सामन्तविरोधे अभिलेख्यप्रत्ययः अभिलेख्यविरोधे ग्रामनगरवृद्धश्रेणिप्रत्ययः ग्रामनगरवृद्धश्रेणिविरोधे दशवर्षभुक्तमन्यत्र राजविप्रस्वात् । शङ्खलिखित q. in वि. र. p. 208. स्वार्थसिद्धौ प्रदुष्टेषु सामन्तेष्वर्थगौरवात् । तत्संसक्तैस्तु कर्तव्य उद्धारो नात्र संशयः । संसक्तसक्तदोषे तु तत्संसक्ताः प्रकीर्तिताः । कर्तव्या न प्रदुष्टास्तु राज्ञा धर्मं विजानता । कात्या. q. by मिता. on या II. 152.

905. आगमं च प्रमाणं च भोगकालं च नाम च । भूभागलक्षणं चैव ये विदुस्तेऽत्र साक्षिणः । बृह. q. by मिता. on या, II. 152, परा. मा. III. p. 392, व्य. प्र. p. 355. Some works read भोगं कालं च.

that a single witness however confident he might be (or however reliable) should not take upon himself to point out and settle the boundary, since this (boundary) dispute being a very important (difficult) matter, its decision should rest with many. The Mit. (on Yāj. II. 152) explains that this prohibition holds good only if the single witness is one not accepted by both sides as reliable. But Nār. (XIV. 10) and Bṛ. (S. B. E.[906] 33 p. 352 verse 11) hold that where a single witness accepted by both sides has to settle the boundary (in the absence of more witnesses and in the absence of reliable patent or concealed signs) he should do so after placing a clod of earth on his head, after being dressed in red robes and wearing red flowers and after observing a fast. If it was a śūdra who was to trace or lay down a boundary Viśvarūpa[907] on Yāj. II. 156 quotes a prose passage of Bṛhaspati that he was to be decked in red pieces of cloth, his face was to be smeared with ashes from a cemetery, a mark was to be made on his chest with five fingers dipped in the blood of a goat and the entrails of the sacrificed goat were to be tied round his neck and he was to hold a clod of earth in the right hand. All this was to impress upon him the gravity of the work and the necessity of doing his best impaŀtially. If no knowing witness or no patent or concealed signs are available the king has himself to settle the boundary between the two villages at his own discretion (Yāj. II. 153, Nār. XIV. 11, Manu VIII. 265). He may divide the land between the two villages equally and construct new marks of boundaries, but if the disputed land will be of greater benefit to one village than to the other the king may assign the whole of the disputed land to the former. Manu VIII. 245 prescribes that when there is a boundary dispute between two villages the king should decide it in the month of Jyeṣṭha when the embankment (marks) become quite clear (owing to water being dried up in summer). The decision made by the witnesses or neighbours became final only after the lapse of three weeks if no calamity (from act

906. ज्ञातृचिह्नैर्विना साधुरेकोऽप्युभयसंमतः । रक्तमाल्याम्बरधरो मृदमादाय मूर्धनि । सत्यव्रतः सोपवासः सीमानं दर्शयेन्नरः । बृह. q. by स्मृतिच. II. p. 231, परा. मा. III. p. 393, व्य. प्र. p. 359. Ms. of मदनरत्न reads सीमान्तम्.

907. शूद्राणां तु यथाह बृहस्पतिः । यदि शूद्रो नेता स्यात्तं क्लैब्येनालङ्कारेणालंकृत्य शवभस्मना मुखं विलिप्याग्नेयस्य पशोः शोणितेनोरसि पञ्चाङ्गुलानि कृत्वा ग्रीवायामान्त्राणि प्रतिमुच्य सव्येन पाणिना सीमालोष्टं मूर्ध्नि धारयेदिति । रक्तकर्पटवसनादिः क्लैब्योलङ्कारः । विश्वरूप.

of God or king) befell the witnesses (Kāt. 751).[908] Manu prescribes (VIII. 261) that the boundary settled by witnesses should be fixed by the king (or recorded in a document containing the names of witnesses). An ancient instance of the fixing of boundaries by two feudatory chiefs is recorded in the Bhumara stone Pillar inscription of the Parivrājaka Mahārāja Hastin and Mahārāja Śarvanātha, who erected a pillar at Amboda to show the boundary between their territories about 510 A. D. (vide Fleet's Gupta Inscriptions No. 24 p. 110). Vide also E. I. vol. 24 pp. 32–34 for inscriptional evidence about the carrying out of all the details laid down in dharmaśāstra works on the settlement of boundaries. Manu VIII, 263, Yāj. II. 153, Nār. XIV. 7 prescribe the middle amercement for each one of the *sāmantas* that falsely settle the boundaries, while Manu (VIII. 257) and Nār. XIV. 8 prescribe the first amercement only for other witnesses such as members of corporations and elderly villagers. If through friendship, greed or fear the witnesses who know the facts do not come forward to settle the boundary they are each to be fined in the highest amercement (Kāt.[909] 750).

Bṛ. (S. B. E. 33 p. 353 verses 19–21) lays down certain interesting rules about alluvion and diluvion. Where a river is the boundary between two villages and the river carries away soil from one village and attaches it to another, the accretion belongs to the village to which it becomes attached, but this is so when the soil carried away has no crops growing on it; if however soil with growing crops is separated from a village and joined to another by a river in flood, the former owner can reap only the crops and the land will belong to the village or field to which it has become attached[910].

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908. सीमाचङ्क्रमणे कोशे पादस्पर्शे तथैव च । त्रिपक्षपक्षसमाहं दैवराजिकमिष्यते । कात्या. 751 q. by मिता. on या. II. 152. V. P. (p. 359) adds 'यथासंख्यमिति शेषः.'

909. बहूनां तु गृहीतानां न सर्वे निर्णयं यदि । कुर्युर्भयाद्वा लोभाद्वा दाप्यास्तूत्तम-साहसम् ॥ कात्या. 750 q. by मिता. on या. II. 152, अपरार्क p. 763.

910. ग्रामयोरुभयोर्यत्र मर्यादा कल्पिता नदी । कुरुते दानहरणं भाग्याभाग्यवशान्नृणाम् । एकत्र कूलपातं तु भूमेरन्यत्र संस्थितिम् । नदी तीरे प्रकुरुते तस्य तां न विचालयेत् । क्षेत्रं सशस्यमुल्लङ्घ्य भूमिश्छिन्ना यदा भवेत् । नदीस्रोतःप्रवाहेण पूर्वस्वामी लभेत ताम् । बृह. q. by स्मृतिच. II. p. 234, परा. मा. III. pp. 398, 399, वि. र. 217, व्य. प्र. p. 362; the latter explains: तस्य नदीवशात्प्राप्तभूमिकस्य तां प्राप्तां भूमिं न विचालयेत् नान्यथा कुर्यात् पूर्वस्वामी नापच्छिन्द्यादित्यर्थः । एतदुप्तसशस्यतीरविषयम् । उप्ततीरविषये पुनः स एव-क्षेत्रं° । तां सशस्यां भूमिम् । उप्तशस्यफललाभपर्यन्तमेतत् । तत्फललाभानन्तरं तु न पूर्वस्वामी तां भूमिं लभेत इत्यवगन्तव्यम् ।. The वि. र. p. 217 holds a different view: 'यत्र तु नदी क्षेत्रादिकं समुल्लङ्घ्य याति तत्र पूर्वग्रामस्यैव सा भूमिरित्यर्थः ।.'

Manu VIII. 262, Yāj. II. 154, Nār. XIV. 12, Kāt. 749 prescribe that the decision of disputes about the boundaries of fields, wells, tanks, groves and parks, palaces, houses, cottages, temples and channels carrying rain water is to be similarly arrived at by the testimony of witnesses (*sāmantas* and others).

Several rules are laid down by Nār., Bṛ. and Kāt. about easements and water-courses.

Bṛ. (S. B. E. 33 p. 354 verse 24) prescribes that no[911] interference should be caused to the manner of the enjoyment of houses (as regards doors, compounds &c.), to the enjoyment of water and markets in the way in which they had been enjoyed from the time the village or house was established or built. This means, acc. to the Sm. C. II. p. 234 and V. P. p. 363 that if a new mode of enjoyment is started in the case of these after the village was established or the house was built then interference may be allowed. Bṛ. (S. B. E. 33 p. 354 verse 25) further says that ancient windows,[912] watercourses, balconies (pegs?), raised platforms on the borders of streets, waterspouts carrying rainwater from a square of houses (and cottages) enjoyed from former days should not be allowed to be interfered with, even if they might cause some inconvenience to the neighbouring house. Kāt. (752–753) similarly provides 'one should not interfere with the base of the wall, a drain (or waterspout), a balcony, window, watercourse and dwelling house of another. These are not to be added to one's house after the first building of it (so as to cause obstruction or annoyance to another), one should not open a window[913] (so as to command a view) in the interior of another's house or open a spout (that will drain off

911. निवेशकालादारभ्य गृहवार्यापणादिकम् । येन यावद्यथा भुक्तं तस्य तन्न विचालयेत् । वातायनं प्रणालीं च तथा निर्यूहवेदिकाः (निर्व्यूह ?) । चतुःशालस्यन्दनिकाः प्राक्निविष्टा न चालयेत् ॥ बृह. q. by अपरार्क p. 764, स्मृतिच. II. p. 235, व्य. प्र. p. 363. 'एवं निवेशनकाले कल्पितं गवाक्षादिकं प्रातिवेश्यानिष्टकार्यपि न केनचिच्चालनीयमित्याह स एव' स्मृतिच. II. p. 235; निर्व्यूहो द्वारनिर्गतकाष्ठविशेष इति कृत्यकल्पतरौ निर्व्यूहो गृहकोण (गृहघोणा?) इति स्मृतिचन्द्रिकायाम् । वेदिका रथ्यादिप्रदेशसंस्कृतोन्नता भूमिः । व्य. प्र. p. 363. These words are taken from the मदनरत्न.

912. Compare section 15 of the Easements Act (Act V of 1882) for the acquisition by prescription of easements of light and air for a building, of support or of right of way &c.

913. 'One should not open a window &c.'—This right of privacy is recognized even now by the courts as enforceable in Gujerat. Vide *Nathubhai v. Chhaganlal* 2 Bom. L. R. 454, *Maneklal v. Mohanlal* 22 Bom. L. R. 226.

water) on to another's house. One should construct places (pits) for depositing ordure, urine and filthy water, a fireplace and a pit at a distance of at least two cubits from the walls of other people (his neighbours) and should not construct these very near to another's house' (vide also Bṛ. S. B. E. vol. 33 p. 354 verses 25–26).

Bṛ. (S. B. E. 33 p. 354 verse 27) defines a *saṁsaraṇa*[914] as the road by which men and beasts pass to and fro without let or hindrance. Kāt. (755) calls it *catuṣpatha* and defines *rāja-mārga* as the road by which people are allowed to pass at certain times (and not at all times). Several rules are prescribed by Kauṭilya and others for obviating nuisances on public roads or near private houses. Bṛ. (S. B. E. 33 p. 354 verse 28) and Kāt. (756) provide that roads should not be obstructed by parking[915] carts and the like thereon, that no one should plant anything on a public road, that a man who puts obstruction on the public road, makes pits or plants trees or wilfully voids excrement thereon should be fined a *māṣaka*, and one who does not give[916] precedence on the road to his *guru*, preceptor or the king should be fined. Manu IX. 282 prescribes the fine of two *kārṣāpaṇas* for voiding or dropping ordure on the public road in the absence of distress and requires the wrongdoer to clean the road, but Manu (IX. 283) makes an exception in the case of persons diseased, very old men, a pregnant woman and a child, who are not to be fined but only reproved for voiding ordure on the road. Vide Matsya 227. 175–76 for the same two verses. Kauṭ. II. 36[917] prescribes the fine of $\frac{1}{8}$ of a paṇa for throwing dust on a cart-road and $\frac{1}{4}$ for obstructing it with mud and a fine double of these

914. यान्त्यायान्ति जना येन पशवश्चानिवारिताः । तदुच्यते संसरणं न रोद्धव्यं तु केनचित् । बृह. q. by अपरार्क p. 765, स्मृतिच. II. p. 235 ; सर्वे जनाः सदा येन प्रयान्ति स चतुष्पथः । अनिषिद्धा यथाकालं राजमार्गः स उच्यते ॥ कात्या. 755 q. by स्मृति. II. p. 235, वि. र. 221.

915. यस्तत्र सङ्करं श्वभ्रं वृक्षारोपणमेव च । कामात्पुरीषं कुर्याच्च तस्य दण्डस्तु माषकः । बृह. q. by अपरार्क p. 765, स्मृतिच. II. p. 235 ; वि. र. p. 221 ascribes this verse to कात्या. and notes that हरिहर and others ascribe it to प्रजापति. न तत्र रोपयेत्किंचिन्नोपहन्यात्तु केनचित् । गुर्वाचार्यनृपादीनां मार्गादानात्तु दण्डभाक् ॥ कात्या. 756 q. by वि. र. p. 221.

916. *For precedence on the road, vide H. of Dh. vol. II. pp. 146–147.*

917. पांसुन्यासे रथ्यायामष्टभागो दण्डः । पङ्कोदकसंनिरोधे पादः । राजमार्गे द्विगुणः । पुण्यस्थानोदकस्थानदेवगृहराजपरिग्रहेषु पणोत्तरा विष्ठादण्डाः । मूत्रेष्वर्धदण्डाः । भैषज्यव्याधिभयनिमित्तमदण्ड्याः । अर्थशास्त्र II. 36.

for doing the same on a royal road; prescribes a fine of one, two, three or four paṇas respectively for voiding ordure on or near a holy place, or a place whence water is taken, or a temple or the king's buildings and exempts from fine such persons as those mentioned in Manu IX. 283. Kāt. (758-759) provides[918] that he who defiles a tank, a garden or holy water (or *ghats*) by throwing filthy matter (ordure &c.) therein should be made to remove the filth and fined the first amercement and also one who pollutes by washing soiled clothes in holy and purifying sacred places (*ghats* &c.) established by great or saintly persons. Yāj. II. 155 prescribes the first, the highest and middling amercements respectively for making breaches in the boundary (between two or more fields), for ploughing a field beyond the boundary of one's field and for depriving a man of his field by intimidation and the like. Vide also Viṣṇu Dh. S. V. 172 and Śaṅkha-Likhita[919] who prescribe a fine of 1008 paṇas for transgressing (the whole of) the boundary (of a field). Manu VIII. 264 (= Matsya 227. 30) provides a fine of 200 paṇas for seizing another's field, garden or house through inadvertance, but 500 for seizing any one of these by intimidation. Nār. XIV. 13-14 and Kāt. (760-761) state[920] that the fruits and flowers of those trees that grow on the boundary between two fields should be declared (by the Judge) as joint between the owners of the two fields and that if the branches of trees growing in one man's field spread over another man's field that man should be understood to be the owner of the trees and branches (together with fruit &c.) in whose field the trees are born (have taken root). The first proposition implies that if one owner

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918. तडागोद्यानतीर्थानि योऽमेध्येन विनाशयेत्। अमेध्यं शोधयित्वा तु दण्डयेत् पूर्वसाहसम्॥ दूषयेत्सिद्धतीर्थानि स्थापितानि महात्मभिः। पुण्यानि पावनीयानि प्राप्नुयात् पूर्वसाहसम्॥ कात्या. q. by अपरार्क p. 765, स्मृतिच. II. 235, व्य. प्र. p. 365.

919. सीमाव्यतिक्रमे त्वष्टसाहस्रम्। शङ्खलिखित q. by स्मृतिच. II. p. 236, व्य. प्र. p. 366; सीमाभेत्तारमुत्तमसाहसं दण्डयित्वा पुनः सीमां लिङ्गान्वितां कारयेत्। विष्णुधर्मसूत्र V. 172, which स्मृतिच. II. p. 236 explains as 'तत्र सीमाभेत्तारमित्यस्य सीमामुल्लङ्घ्य कर्षकमित्यर्थोऽध्यवसेयः। सीमाप्रवेशे पुनः कर्षणाद्यकरणमेव पुनः सीमाकरणम्। तद्यथा भवति तथा राजा यतेतेति पुनः सीमां कारयेदित्यस्यार्थः'. The text in Mr. Gharpure's ed. is corrupt.

920. सीमामध्ये तु जातानां वृक्षाणां क्षेत्रयोर्द्वयोः। फलं पुष्पं च सामान्यं क्षेत्रस्वामिषु निर्दिशेत्। अन्यक्षेत्रे तु जातानां शाखा यत्रान्यसंस्थिताः। स्वामिनं तं विजानीयाद्यस्य क्षेत्रेषु संश्रिताः॥ कात्या. 760-61 q. by अपरार्क pp. 766-767, स्मृतिच. II. p. 236, वि. र. 223. नारद XIV. 13-14 are almost the same, reading स्वामिनस्ता विजानीयादन्यक्षेत्रविनिर्गताः.

alone takes all the fruits he is liable to be fined for taking half the fruits.

A *setu* (watercourse) is said by Nār. (XIV. 18) to be of two kinds, viz. that which is dug (*kheya*) into the soil in order to drain off excessive water and that which is constructed (*bandhya*) as an embankment to prevent water from flowing away. Yāj. II. 156 and Nār. XIV. 17 provide that a *setu* made by the owner of one field in the neighbouring field should not be forbidden by the owner of that field, if the loss of soil it causes (to the latter) is small as compared with the great benefit that it may confer. Nār. (XIV. 20–21) and Yāj. II. 157 prescribe that one should make a dike or watercourse on another's land with the permission of that man or with the permission of the king as otherwise he cannot reap the benefit thereof. Kāt. (762–63) provides a similar rule about the repairs to a house or garden or tank made by a stranger without the owner's or the king's permission. It is stated by Nār. (XIV. 23–25) that when the owner of a field is unable (to cultivate it) or is dead or is not heard of, if a stranger cultivates the field without objection from any body, the stranger shall enjoy the produce of the field, that if the owner (or his son) returns while the field is being tilled by a stranger, he can get his field back on repayment to the stranger of all the money expended on making the land (ready for crops). If the owner is unable to return the expenses, the stranger may retain $\frac{7}{8}$ th of the produce every year for eight years giving $\frac{1}{8}$th to the owner every year and should hand over the field to the owner when the 8th year arrives. Yāj. II. 158 and Vyāsa provide that if a person takes a field from the owner on rent for cultivation, but gives up the cultivation after slightly ploughing it and does not employ someone else to complete the cultivation, then he should be made to pay the produce that would have been recovered from the field if properly cultivated and also should be fined and the field may be taken from him and given to another tenant[921].

921. क्षेत्रं गृहीत्वा यः कश्चिन्न कुर्यान्न च कारयेत्। स्वामिने स शदं दाप्यो राज्ञे दण्डं च तत्समम्॥ व्यास q. by वि. चि. p. 65, व्य. प्र. p. 368; स्मृतिच. II. p. 238, परा. मा. III. p. 408 ascribe this to बृह.

CHAPTER XXIII

VAKPĀRUṢYA AND DAṆḌAPĀRUṢYA

(Abuse and defamation ; assault)

Vākpāruṣya, daṇḍapāruṣya, steya, strīsaṅgrahaṇa, sāhasa are five titles out of 18 that are concerned with what may be called criminal matters or crimes in modern nomenclature. Vide under *sāhasa* below.

Nār. XVIII. 1 defines *vākpāruṣya* as 'abusive words that loudly proclaim censure of another's country, caste, family and the like and that cause mental pain or offence to that man.' Kāt. (768) defines it as[922] consisting in making the sound 'hum' (of defiance) before another or coughing before him, of imitating or uttering before another whatever is censurable according to popular notions. Nār. (XVIII. 2–3) says that abuse is of three kinds, *niṣṭhura* (reproachful such as calling a man a fool or a rogue), *aślīla* (obscene or insulting), *tīvra* (mercilessly severe such as charging a man with such grave sins as brāhmaṇa–murder or drinking liquor) and that the punishment for each later one is more severe than for each preceding one. Examples of the abuse of country, caste and family are respectively 'the Gauḍas are quarrelsome', 'brāhmaṇas are extremely greedy', 'persons of the Viśvāmitra gotra commit cruel deeds'. Bṛ. (S. B. E. vol, 33 p. 355 verses 2–4) divided vākpāruṣya into three kinds viz. lowest (when the country, caste or family of a person is abused or sinfulness is ascribed without specifying any definite act), middling (speaking that the abuser will have sexual intercourse with the mother or sister of the abused or ascribing the commission of *upapātakas*[923] or minor sins to the abused), highest (charging him with taking forbidden food or drink or mercilessly exposing or ascribing the grave sins to a person). Various fines are prescribed in the smṛtis that depend upon the above distinctions and also on the castes of the abuser and the

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922. हुङ्कारः कासनं चैव लोके यच्च विगर्हितम् । अनुकुर्याद्वदनूयाद् वाक्पारुष्यं तदुच्यते ॥ कात्या. (768) q. by अपरार्क p. 805, स्मृतिच II. p. 6.

923. For upapātakas vide Manu XI. 59–66 (such as *govadha*, adultery), Yāj. III. 234–242, Viṣṇudharmasūtra (37) which contain long lists of them.

abused. For example, Manu VIII. 267 (=Nār. XVIII. 15=Matsya 227. 66) prescribes the punishments of 100 paṇas, 150 or 200 paṇas, corporal punishment respectively against a kṣatriya or a vaiśya or a śūdra abusing a brāhmaṇa and conversely Manu VIII. 268 (= Nār. XVIII. 16) provides that a brāhmaṇa calumniating a kṣatriya, vaiśya or śūdra should respectively be fined 50, 25 or 12 paṇas. In the case of the abuser and the abused being of the same varṇa the fine for ordinary abuse is 12 paṇas, but double of this if the abuse is, according to Manu VIII. 269 (= Nār. XVIII. 17), foul (relating to mother, sister &c.). Vide Yāj. II. 206–207, Viṣṇudharmasūtra V. 35. From the remarks of the Sm. C. and the Madanaratna it appears that these discriminating provisions[924] based on the caste[925] and the ascription of minor or grave sins had become a dead letter and were not being enforced by the kings in India by the 12th century A. D. at least. One or two matters, however, may be noted. Manu VIII. 268–272 and 274 are the same as Nār. XVIII. 16–17, 22–24. Even the truth of an imputation[926] afforded no complete exemption e. g. if a person angrily calls a man a thief (who was once convicted of it) or speaks of him as blind or cripple, the former would be fined at least one kārṣāpaṇa (Manu VIII. 274 = Nār. XVIII. 18). Kāuṭ. (III. 18) provides in this case three paṇas[927] as fine and Viṣṇudharmasūtra (V. 27) two paṇas. When the

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924. एवं जातिगुणयोर्विधिविशेषदर्शने तथा प्रथममध्यमोत्तमभावेन त्रिधाभिहित-वाक्पारुष्यान्तर्गतभेददर्शने तथा निष्ठुराश्लीलतीव्रत्वादिवाक्पारुष्यविशेषदर्शने तथा श्रुताभि-जनदेशकर्मशरीरपितृमातृगुर्वाद्यधिक्षेपविशेषदर्शने तन्निबन्धनोच्चावचदण्डविधायिकाः स्मृतयो यद्यपि वचःसमुच्चयकारैः समुच्चिता अस्माभिस्तु संप्रति तदर्थानुष्ठाननिष्ठप्रजाशिक्षका-भावाद् वृथा ग्रन्थविस्तरापत्तिर्मा भूदिति न समुच्चिताः । स्मृतिच. II. p. 327. The words from श्रुताभिजन up to संप्रति occur also in स. वि. p. 479, which winds up as ' संप्रति तदनुष्ठानाभावाद् ग्रन्थविस्तरतः (०रः ?) किमर्थमित्युपरतम् ' ; यद्यपि वाक्पारुष्य-दण्डपारुष्ययोर्विषयभेदेनान्येपि दण्डविशेषाः स्मर्तृभिरुपदिष्टाः सन्ति तथापीदानीन्तनै राजभिः प्रजाक्षोभप्रसङ्गेन तादृग्दण्डस्य कर्तुमशक्यत्वादत्युपयोगाभावेन निरर्थकग्रन्थविस्त-रभयात्तत्रास्माभिः संगृहीताः । (मदनरत्न at the end of दण्डपारुष्य).

925. Vide ताण्ड्यब्राह्मण 14. 6. 6. for an abuse as to *varṇa* ' वत्सश्च मेधा-तिथिश्च काण्वावास्तां तं वत्सं मेधातिथिराक्रोशदब्राह्मणोसि शूद्रापुत्र इति । '

926. Compare sec. 499 of the Indian Penal Code, exception one, which provides that the mere truth of an imputation does not exonerate a man from the charge of defamation, unless the imputation is uttered for the public good.

927. शरीरप्रकृतिश्रुतवृत्तिजनपदानां शरीरोपवादेन काणखञ्जादिभिः सत्ये त्रिपणो दण्डः । मिथ्योपवादे षट्पणो दण्डः । शोभनाक्षिदन्त इति काणखञ्जादीनां स्तुतिनिन्दायां द्वादशपणो दण्डः । अर्थशास्त्र III. 18.

imputation is false all provide for a fine double of that provided in case the imputation is true. Ironic praise of a man (such as describing one who is blind of one eye as one endowed with a beautiful eye) is made punishable by Kauṭ. (III. 18). To warn[928] a man against associating with a person who is guilty of a grave sin or of theft does not entail punishment if the truth of the imputation be established (Kāt. 776). Acc. to Kauṭ. and Kāt. (775) the king was to award only half the fine prescribed if the accused said 'what I uttered in abuse was done through ignorance, carelessness, rivalry or friendship; I shall not again do so'[929]. A person who abuses a king doing his duty was to have his tongue cut off or forfeited all his property (Nār. XVIII. 30, Yāj. II. 302). Āp. II. 10. 27. 14 prescribed for a śūdra that abused any one of the three higher castes leading a religious life the punishment of the cutting of the tongue[930].

Daṇḍapāruṣya (assault). Kauṭ. III. 19 begins his treatment of this topic by saying that it comprises touching, threatening to strike and actually striking another[931]. Nār. XVIII. 4 defines it as injuring the limbs of another with the hand, foot, weapon or other means (such as stones) or defiling or causing pain by (bringing) ashes and similar substances in contact with another. The Mit. on Yāj. II. 212 explains that even causing injury to animals and trees would fall under this title. Nār. XVIII. 5–6 provide that assault may be of three kinds viz. mild, middling and highly punishable according as a person merely makes preparations to assault or attacks without any qualm or causes a wound and that this crime can further be divided into three kinds according as the object attacked is low in value or middling or high. A verse from the Pariśiṣṭa (quoted by Sm. C. II. p. 327 and V. P. p. 370) states 'whoever causes pain or draws blood, wounds, breaks, cuts off, pierces (the limbs or bodies) of living beings is guilty of daṇḍapāruṣya'. According to Bṛ. (S. B. E. vol. 33 p. 357 verse

928. यत्र स्यात्परिहारार्थं पतितस्तेन (पतितत्वेन ?) कीर्तनम्। वचनात्तत्र न स्यात्तु दोषो यत्र विभावयेत्॥ कात्या. (776) q. by स्मृतिच. II. p. 327, वि. र. p. 258. Compare exceptions 9 and 10 of sec. 499 of the I. P. C.

929. मोहात्प्रमादात्संघर्षात् प्रीत्या प्रोक्तं मयेति यः। नाहमेवं पुनर्वक्ष्ये दण्डार्धं तस्य कल्पयेत्॥ कात्या. 775 q. by वि. र. p. 246, वि. चि. p. 70 (both ascribe to कात्या. and उशनस्). स्मृतिच. II. p. 327, व्य. म. 229, व्य. प्र. p. 384 ascribe to उशनस् alone. प्रमादमदमोहादिभिरर्धदण्डाः। अर्थशास्त्र III. 18.

930. जिह्वाच्छेदनं शूद्रस्यार्यं धार्मिकमाक्रोशतः। आप. ध. सू. II. 10. 27. 14.

931. दण्डपारुष्यं स्पर्शनमवगूर्णं प्रहतमिति। अर्थशास्त्र III. 19.

1) *daṇḍapāruṣya*[932] consists in striking (a person) with the hand, with a stone, a club, ashes, mud, dust or a weapon. The Mit. on Yāj. II. 212 following Nār. XVIII. 7-12 lays down certain propositions about both abuse and assault. A person who does not return abuse or does not assault when abused or assaulted, deserves to be commended; if he returns the abuse or assaults in return, the person who began the quarrel is to be dealt with more severely than the other. When two persons[933] attack each other and there are no means for finding who began the quarrel equal punishment is to be awarded to both; but when two quarrel he who began the quarrel or he who persists longer than the other is to be fined more than the other party and lastly if men of the lowest[934] castes such as *śvapāka*, *meda*, *cāṇḍāla*, hunters, elephant riders, vrātyas and dāsas (slaves) assault respectable men and ācāryas then they are to be punished (whipped) by good men then and there, but if such punishment is not possible, then the king should award corporal punishment (of various kinds according to the nature of the crime) and should not take fines from them, since they are the foulest among men and their wealth also is foul. Kāt. (783) and Bṛ. (S. B. E. 33 p. 359 verse 15) are to the same effect. The several smṛtis lay down various punishments for various kinds of assaults but no useful purpose will be served by going into details. Kāt.[935] (786) provides that just as in abuse punishments depend on the castes of the abuser and the abused so also in assaults higher punishment is to be awarded if the attacker is of a lower caste than the person attacked or lower punishment if the person attacked is of a lower caste. Manu VIII. 286 and Uśanas[936] lay down that the punishment for the offence should be commensurate with

932. हस्तपाषाणलगुडैर्भस्मकर्दमपांशुभिः । आयुधैश्च प्रहरणं दण्डपारुष्यमुच्यते ॥ बृह. q. by वि. र. p. 259.

933. द्वयोः प्रहरतोर्दण्डः समयोस्तु समः स्मृतः । आरम्भकोऽनुबन्धी च दाप्यः स्याद्धिकं दमम् ॥ बृह. q. by अपरार्क p. 812, वि. र. p. 275.

934. अस्पृश्यधूर्तदासानां म्लेच्छानां पापकारिणाम् । प्रतिलोमप्रसूतानां ताडनं नार्थतो दमः ॥ कात्या. q. by अपरार्क p. 813, वि. र. p. 278 ; प्रातिलोम्यास्तथा चान्त्याः पुरुषाणां मलाः स्मृताः । ब्राह्मणातिक्रमे वध्या न दातव्या धनं क्वचित् । वि. र. p. 277.

935. वाक्पारुष्ये यथैवोक्ताः प्रातिलोम्यानुलोमतः । तथैव दण्डपारुष्ये पात्या दण्डा यथाक्रमम् ॥ कात्या. 786, q. by परा. मा. III. p. 418, वि. र. 269.

936. यत्र नोक्तो दमः सर्वैरानन्त्यात्तु महात्मभिः । तत्र कार्यं परिज्ञाय कर्तव्यं दण्डधारणम् । उशनस् q. by स्मृतिच. II. p. 328 (which explains कार्यं प्राणिषु प्राण्यन्तरेरुत्पादितं दुःखम्).

the pain or injury caused by the offender to a man or beast. A few examples may be set out. Probably the oldest reference to fines for assault in Sanskrit literature is contained in the Taittirīya Saṁhitā[937] II. 6. 10. 2: 'He who threatens to strike a brāhmaṇa shall be fined with a hundred (cows or niṣkas ?), he who strikes a brāhmaṇa shall be fined with a thousand; he who draws blood from him shall not behold the *pitṛs* for as many years as there are particles of dust mixed with the blood that falls on them'. This passage is interpreted in Jai. III.[938] 4. 17 as being a recommendatary injunction (*puruṣārtha*) to all at all times to desist from assaulting a brāhmaṇa. Gaut. (21. 20–22) and Manu XI. 206–207 appear to take the Tai. S. passage differently and refer the figures of 100 and 1000 to years. Kauṭ. III. 19 prescribes various fines for various kinds of assaults. Bṛ. (S. B. E. 33 p. 357 verses 2, 3 and 7) says that if a person throws ashes or the like at another or beats him with the hand the fine should be one *māṣa*, but if he strikes with a brick, stone or stick the fine should be two māṣakas; this however applies when both are of the same caste, but if he assaults a woman who is another's wife or a person of a higher caste, the fine may be higher and higher. For one who bruises the skin of another or draws blood by assault the fine is one hundred paṇas, and for him who causes a wound by removing some flesh the fine is six māṣakas and he who causes breaking of bones should be banished (Manu VIII. 284 = Nār. XVIII. 29). Kāt. prescribes the highest amercement for cutting off the ear, the lip, the nose, the foot, the eye, the tongue, the penis, the hand, and the middle amercement for causing injury (or wounding). Gaut. XII. 1, Kauṭ. III. 19, Manu VIII.[939] 279, Yāj. II. 215, Bṛ. provide the punishment of the cutting of that limb with which a śūdra strikes a person of the three higher castes. And the Mit. on Yāj. II. 215 applies by analogy the same rule to a vaiśya striking a kṣatriya. Manu VIII. 280 extends the same punishment to a śūdra for

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937. यो ब्राह्मणायापगुराते तं शतेन यातयात्, यो निहनत्तं सहस्रेण यातयात्, यो लोहितं करवद्यावत्प्रस्कद्य पांसून् संगृह्णात्तावतः संवत्सरान् पितृलोकं न प्रजानादिति। तस्माद् ब्राह्मणाय नापगुरेत न निहन्यान्न लोहितं कुर्यात्। तै. सं. II. 6. 10. 2.

938. शंयौ च सर्वपरिदानात्। जै. III. 4. 17. शबर's conclusion is: सर्वावस्थस्य ब्राह्मणस्यायं प्रतिषेध उक्तः, न दर्शपूर्णमासगतेनैव नावगोरणादि कर्तव्यमिति।

939. शूद्रो द्विजातीनभिसन्धायाभिहत्य च वाग्दण्डपारुष्याभ्यामङ्गमोच्यो येनोपहन्यात्। गौ. XII. 1; शूद्रो येनाङ्गेन ब्राह्मणमभिहन्यात्तदस्य छेदयेत्। अवगूर्णां निष्क्रयः। स्पर्शेनार्धदण्डः। अर्थशास्त्र III. 19; येनाङ्गेन द्विजातीनां शूद्रः प्रहरते रुषा। छेत्तव्यं तत्तदेवास्य तन्मनोरनुशासनम्॥ बृह. q. by स्मृतिच. II. p. 328.

merely raising the hand or a club to strike one of a higher caste. Manu VIII. 281–283 (=Nār. XVIII. 26–28) provide that a person of a low caste defiantly sitting on the same seat with one of a higher caste was to be first branded on the waist and then banished or his hips were to be gashed (in such a way that he might not die), that a śūdra defiantly spitting on the body of a brāhmaṇa had his lips cut off or a śūdra voiding urine or fæces on a brāhmaṇa had those offending limbs cut off, or a śūdra defiantly seizing a brāhmaṇa by the hair or the feet or beard or neck or testicles would have both his hands cut off. If several conspire and strike a person who is alone, each one was to be sentenced to twice the punishment prescribed for the offence (Yāj. II. 221, Kauṭ.[940] III. 19, Viṣṇu Dh. S. V. 73). Kauṭ. III. 19, Manu VIII. 287, Yāj. II. 222, Bṛ., Kāt. 787, Viṣṇu Dh. S. V. 75–76 provide that the king should make an offender pay a fine and also the expenses of medical treatment and diet till the wound is healed up and the person attacked is able to do his usual work (vide note 613 above). For mischief to property[941] and for killing or maiming animals, Kauṭ., Manu, Yājñavalkya and others provide various fines. For example, Kauṭ. III. 19 prescribes that when property of small value is destroyed by a man he should be punished with fine equal to the value of the article and should be made to restore the article or its value to the owner; but in the case of articles of substantial value the fine is double of the value. Manu VIII. 288 is of similar import. Yāj. II. 223 provides varying fines if a person wrongfully causes damage to a wall by knocking it (with a club), or pierces it or divides it into two or demolishes it and makes the offender pay to the owner the cost of restoring it. Manu. VIII. 296–298, Yāj. II. 225–226 prescribe fines for causing death or injury to animals of small value (such as goats) and big animals like elephants, horses and cows. Yāj. II. 227–229, Kauṭ. III. 19, and Kāt. 793 provide fines for causing loss by injuring or felling trees, shrubs and creepers. Yāj. II. 214 holds[942] that if a person throws mud,

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940. महाजनस्यैकं घ्नतां प्रत्येकं द्विगुणो दण्डः । अर्थशास्त्र III. 19.

941. प्रमापणे प्राणभृतां दद्यात्तत्प्रतिरूपकम् । तस्यानुरूपं मूल्यं वा दद्यादित्यब्रवीन्मनुः ॥ कात्या. 792 q. by परा. मा. III. p. 425, वि. र. 284; वनस्पतीनां सर्वेषामुपभोगो यथा यथा । तथा तथा दमः कार्यो हिंसायामिति धारणा ॥ मनु VIII. 285. This last is cited as कात्यायन's in वि. र. p. 284.

942. हीनेष्वर्धदमो मोहमदादिभिरदण्डनम् । या. II. 214; हीनेष्वर्धदण्डाः परस्त्रीषु द्विगुणाः । प्रमादमदमोहादिभिरर्धदण्डाः । अर्थशास्त्र III. 19.

dust or saliva or filthy things on another or strikes with his feet, he should not be fined if he is under the influence of intoxicants at the time or is not in his right mind or does it through mistake, while Kauṭ. III. 19 prescribes half of the usual fine in such cases.

An important question is how far the right of private defence of person or property was recognised by the dharmaśāstra works. This subject has partly been dealt with in H. of Dh. vol. II. pp. 148-151 in connection with an *ātatāyin* (a desperate man) who is an incendiary or a poisoner or is armed with a weapon, is a robber, one carrying away another's wife or seizing by force (a field). Although there is great diversity of views about killing a brāhmaṇa *ātatāyin*, there is no difference of opinion as to repelling with force culminating even in death an *ātatāyin* of any other caste. Gaut. VII. 25 allows even a brāhmaṇa to arm himself when his life is in danger.[943] Baud. Dh. S. II.[944] 2. 80, Manu VIII. 348-349 lay down that brāhmaṇas and vaiśyas may oppose with force when they are prevented from doing their religious duties by felons or when there are disturbances caused by invasion or the like, for saving their own lives, for preventing the seizure of their cows or other wealth or for protecting women or brāhmaṇas. The Mit.[945] on Yāj. II. 286 remarks that these rules of Manu are applicable when there is no time to report to the king or when delay in opposing violence will mean loss or ruin. According to Kāt.[946] (800) no blame attaches to a man who kills wicked men that are about to kill another, but when they have desisted from their attempt, they should be arrested and not killed. Aparārka (on Yāj. III. 227) remarks that persons are to be regarded as *ātatāyin* while they are about to set fire or to kill or they are in the act of setting fire or killing and the like, that where it is not possible to prevent them from doing what

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943. प्राणसंशये ब्राह्मणोपि शस्त्रमाददीत । गौ. VII. 25.

944. गवार्थे ब्राह्मणार्थे वा वर्णानां वापि सङ्करे । गृह्णीयातां विप्रविशौ शस्त्रं धर्मव्यपेक्षया ॥ बौ. ध. II. 2. 80 ; शस्त्रं द्विजातिभिर्ग्राह्यं धर्मो यत्रोपरुध्यते । मनु VIII. 348, which the मदनरत्न (ms) explains 'धर्मस्तटाकादिरूपो यत्र देशे काले वा भेदनछेदनादिनोपरुध्यते तत्र । ... तथा दक्षिणानां सङ्करे गोग्रहणनिमित्तके युद्धे । स्त्रीविप्राभ्युपपत्तौ दुर्बलहिंसानिवारणे धर्मार्थ्हेतोर्घ्नन् न दुष्यति ।'

945. यदा तु राज्ञो निवेदनेन कालविलम्बनेन कार्यातिपाताशङ्का तदा स्वयमेव जारादीन्हन्यात् । शस्त्रं द्विजातिभिर्ग्राह्यं धर्मो यत्रोपरुध्यते । इति । मिता. on या. II. 286.

946. उद्यतानां तु पापानां हन्तुर्दोषो न विद्यते । निवृत्तास्तु यदारम्भाद्ग्रहणं न वधः स्मृतः ॥ कात्या. 800 q. by स्मृतिच. II. p. 315.

they intend to do except by killing them there only the texts allow killing; but that where it is possible to prevent them by merely wounding them with a weapon or stick, killing them would be an offence.[947] Medhātithi[947a] on Manu VIII. 348 differs from this and allows the killing of a desperado even after he has carried out his purpose and not only when he is about to carry it out or is in the act of carrying it out. The view of the Mit. on Yāj. II. 21 is that one has a right to oppose and kill another in self-defence, in defence of women and other weak people, who cannot defend themselves against a murderous or violent attack and that even if a wrongdoer of the brāhmaṇa caste was killed in the exercise of such right there is no punishment at the hands of the king and the prāyaścitta (for killing a brāhmaṇa) is a light one. Similarly a man can kill with impunity animals having claws, horns or fangs or horses or elephants if they attack a person (Kāt. 805 q. by Sm. C. II. p. 316).

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947. अत्र च वर्तमाग्निदानादिव्यापार एवाततायिन उच्यन्ते । तद्व्यापारनिवारणं च यत्र वधमन्तरेण न सम्भवति तत्रैव तद्वधानुज्ञा । यत्र तु दण्डशस्त्रादिप्रहारमात्रेणैव शक्यो निवारयितुं तत्र तु तद्वधो दोषनिमित्तमेव । अत एवोक्तं बृहस्पतिना–आक्रुष्टस्तु समाक्रोशंस्ताडितः प्रतिताडयन्–इत्यादि । अपरार्क p. 1043. For the right of private defence of person and property compare the above dicta with sections 99 to 105 of the Indian Penal Code.

947a. आयान्तामिति वचनादासन्नशस्त्रो हन्तुमभिधावन् दारान् वा जिहीर्षन् हन्तव्यः कृते तु दोषे किमन्यत्करिष्यतीत्युपेक्षा इति ब्रूवते तदयुक्तं यतः प्रकाशमप्रकाशं चेति वक्ष्याम्यते । समानौ ह्येतौ करिष्यन् कृतवांश्च सुष्ट (? दुष्ट) श्चेदिति । तस्मादायान्तमित्यनुवादः कर्तुमागतं कृत्वा वागतमिति । आततायित्वाच्चासौ हन्यते न च कृतवचन आततायित्वमुपैति (? न च कृतवत आततायित्वमपैति) । मेधा. on मनु VIII. 348; अतश्च ब्राह्मणादय आततायिनश्च आत्मादित्राणार्थं हिंसानभिसन्धिना निवार्यमाणाः प्रमादाद्यदि विपद्येरंस्तत्र लघुप्रायश्चित्तं राजदण्डाभावश्चेति निश्चयः । मिता. on या. II. 21. The मदनरत्न quotes both those views and also that of स्मृतिच. II. p. 315.

CHAPTER XXIV

STEYA (theft).

In the Ṛg. there is frequent mention of *taskara*, *stena* and *tāyu*. In Ṛg. VI. 28. 3 the sage[948] says 'may the cows not disappear from us, may a thief not injure them'. In Ṛg. VIII. 29. 6 it is said 'Pūṣan guards the ways and knows of concealed treasures as a thief does'. From Ṛg. X. 4. 6 it appears that thieves were desperate and bound people with ropes and (from Ṛg. I. 191. 5) that thieves (*taskaras*) appeared at night. *Tāyu* (thief) occurs in Ṛg. I. 50. 2, IV. 38. 5, VI. 12. 5 and is an Indo-Iranian word. The word 'stena' occurs in Ṛg. VI. 28. 7 and means 'one who is a cattle-lifter'. Ṛg. VIII. 67. 14 indicates that a *stena* was bound with ropes (when caught). In Ṛg. VII. 55. 3 the dog is asked to run after a *stena* and a *taskara*, the first being probably a thief (who secretly carries away property) and the second a thief who openly carries it away. In the Vāj.[948a] S. XI. 79 (=Tai. S. IV. 1. 10. 2) we have the *malimlu* in addition to *stena* and *taskara*. Atharvaveda IV. 3 contains charms against wolves, tigers and thieves (*taskaras*).

Steya is distinguished from *sāhasa* in Manu VIII. 332, Kauṭ. III. 17, Nār. XVII. 12 and other works as stated under sāhasa below. Kāt. 810 defines[948b] it as 'depriving a man of his wealth either clandestinely or openly and either by night or by day'. Nār. XVII. 17 defines it as 'deprivation of wealth by various means from people that are asleep, careless or intoxicated'. It may be of three kinds according to the value of the thing stolen viz. trifling (when earthen-ware, seats, cots, wood, hides, grass, beans in pods or cooked food is stolen) or middling (when the theft relates to clothes except silken

948. न ता नशन्ति न दभाति तस्करो नासामामित्रो व्यथिरा दधर्षति । ऋ. VI. 28. 3; पथ एकः पीपाय तस्करो यथाँ एष वेद निधीनाम् ॥ ऋ. VIII. 29. 6; तनूत्यजेव तस्करा वनर्गू रशनाभिर्दशभिरभ्यधीताम् । ऋ. X. 4. 6 (explained in निरुक्त III. 14).

948a. ये जनेषु मलिम्लवः स्तेनासस्तस्करा वने । ये कक्षेष्वघायवस्तांस्ते दधामि जम्भयोः ॥ वाज. सं. XI. 79. The com. on Tai. S. explains: 'स्तेनाः गुप्तचोराः तस्कराः प्रकटचोराः अतिप्रकटा निर्भया ग्रामेषु सन्धिकराः मलिम्लुवः'.

948b. प्रच्छन्नं वा प्रकाशं वा निशायामथवा दिवा । यत्परद्रव्यहरणं स्तेयं तत्परिकीर्तितम् ॥ कात्या. 810 q. by दायभाग VI. 9, p. 224.

ones, animals except cows and bulls, metals except gold, rice and barley), grave or high (when gold, jewels, silken cloth, women, men, cattle, elephants, horses and the wealth of brāhmaṇas or temples is stolen). Vide Nār. XVII. 13–16 and Yāj. II. 275. Thieves are either *prakāśa* (open or patent) or *aprakāśa* (secret) acc. to Manu IX. 256, Bṛ.[949] (S. B. E. 33 p. 359 v. 2). Acc. to Manu IX. 258–260, Nār. (pariśiṣṭa 2–3) and Bṛ. (S. B. E. 33 p. 360 verses 3–4) patent thieves are traders who employ false weights and balances, gamblers, quacks, bribers of *sabhyas*, prostitutes, those who profess to arbitrate, those who manufacture imitation articles, those who subsist by prognosticating good fortune or portents or by magic or palmistry, false witnesses &c. Manu (IX. 261–266) states that in order to find out such thieves the king should employ spies in various disguises at various places such as meeting halls, refreshment rooms, brothels, wineshops, theatres &c. The concealed thieves are those who move about with tools for house-breaking without being observed and whose residence is not known; they are principally[950] of nine kinds viz. one who quietly relieves a man of his money when the latter is attending to something else, a house-breaker, a highway robber (who robs travellers), a cut-purse, one who steals (or kidnaps) a woman or a man, cattle, horses and other animals. Yāj. II. 266–268 and Nār. (pariśiṣṭa 9–12) indicate the various ways in which thieves may be detected and caught viz. by the (police) officers recovering a part of the booty from a man or by tracing foot-steps, or by seizing one who has been often found to be a thief, or by finding out that the man suspected cannot state his place of residence; and they recommend that on suspicion others may be caught, if on being questioned they attempt to conceal their caste or name or if they are found addicted to gambling, wine and women or if their mouth becomes dry or their voice changes or if they spend lavishly though they have no ostensible means of earning, or those who sell lost or second-hand goods or who move about in disguise or who are found making inquiries about others' houses

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949. प्रकाशाश्चाप्रकाशाश्च द्विविधास्तस्कराः स्मृताः । प्रज्ञासामर्थ्यमायाभिः प्रभिन्नास्ते सहस्रधा ॥ बृह. q. by स्मृतिच. II. p. 317, व्य. प्र. p. 386.

950. उत्क्षेपकः सन्धिभेत्ता पान्थमुड्ग्रन्थिभेदकः । स्त्रीपुंगोश्वपशुस्तेयी चौरो नवविधः स्मृतः ॥ व्यास q. by स्मृतिच. II. p. 318, व्य. प्र. p. 387.

or wealth. The Mit. on Yāj.[951] II. 268 quotes Nār. and gives the warning that the king must carefully examine whether the man caught is really the thief and should not convict merely on suspicion, since even an innocent man may have stolen property near him or betray some of the signs noted above. When property alleged to be stolen is found with a man, it may be that the articles came to his hands from another's hand or he may have taken it up when it lay unclaimed on the ground or he may have taken it as a thief; liars often have the appearance of honest men and *vice versa* (Nār. I. 71)[952]. Nārada's dictum (I. 42) that one who is not a thief may be held to be a thief as in the case of Māṇḍavya has already been quoted above (p. 357n. 549). Vide Manu IX. 270 (= Matsya 227. 166) cited on p. 355 above. When a person is seized on suspicion of being a thief he could not be acquitted on his mere denial of the offence. He had to prove innocence by ordinary evidence (such as proof that he was elsewhere when the theft was committed) or ordeals (Yāj. II. 269). The general rule about the punishment of patent thieves was that the punishment was to be proportionate to the lightness or gravity of the crime and not to their wealth (Vyāsa)[953]. Br. (S. B. E. 33 p. 361 verses 10 ff) quoted in Par. M. III. pp. 439–440 and V. P. pp. 387–88 prescribes various punishments for particular kinds of patent thieves e. g. sabhyas giving wrong decisions (for bribes) or those who deceive by betraying the trust imposed in them are to be banished. Manu IX. 292 (= Matsya 227. 184–185) holds that the goldsmith is the worst of all deceitful persons (*kaṇṭakas*) and if he is found committing fraud his limbs should be cut off bit by bit.

As regards the concealed thieves the texts lay down special rules. Nār. XVII. 21 extends to theft of the three kinds mentioned above the same punishments that are awarded in the three kinds of sāhasa. Manu VIII. 323 prescribes death sentence for kidnapping men of good family and particularly women

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951. अन्यहस्तात्परिभ्रष्टमकामादुद्धृतं भुवि। चौरेण वा परिक्षिप्तं लोप्त्रं यत्नात्परीक्षयेत्॥ कात्या. acc. to अपरार्क p. 841, वि. र. p. 337. मिता. on या. II. 268 and परा. मा. III. p. 437 ascribe it to नारद: The मिता. remarks: न पुनर्लिङ्गदर्शनमात्रेण चौरनिर्णयं कुर्यात्। अचौरस्यापि लोप्त्रादिचौर्यलिङ्गसम्बन्धसम्भवात् .

952. असत्याः सत्यसंकाशाः सत्याश्चासत्यसंनिभाः। दृश्यन्ते विविधा भावास्तस्माद्युक्तं परीक्षणम्॥ नारद I. 71 ; in the शान्तिपर्व 111. 65–66 this very verse occurs with the variation that सभ्य and असभ्य are substituted for सत्य and असत्य.

953. नैगमाद्या भूरिधना दण्ड्या दोषानुरूपतः। यथा ते न निवर्तन्ते तिष्ठन्ति समये तथा॥ व्यास q. by स्मृतिच. II. p. 317, व्य. प्र. p. 387.

and for theft of costly jewels; while Vyāsa prescribes death by burning on red-hot iron bed for kidnapping women and mutilation of hands and feet for kidnapping a man. Yāj. II. 273 provides impalement for those who confine others as captives, for those who steal horses and elephants and who strike others with violence, while Manu IX. 280 prescribes death for those who break royal store-houses and armoury, the inner shrine in a temple and who steal horses, chariots and elephants. For him who commits theft by housebreaking at night Manu (IX. 276) and Bṛ. (S. B. E. 33 p. 361, verse 17) provide impalement[954] after cutting off his hands. Yāj. II. 274, Manu IX. 277, Viṣṇu Dh. S. V. 136 prescribe for the cut-purse the punishment of the cutting of the thumb and index finger for the first offence, the cutting of the hand and foot if it is the second offence and death if he repeats the same offence a third time. Not only was the thief made to undergo punishment but he was also liable to make good the loss of property to the person robbed (Manu VIII. 320, Yāj. II. 270, Viṣṇu Dh. S. V. 89, Nār. pariśiṣṭa 21). According to Nār. (pariśiṣṭa 22–24) for thefts of articles of small value the fine was five times their price, while Manu (VIII. 326–329) said it was twice as much as the price. Gaut. XII. 12–14,[955] Manu VIII. 337–338, Nār. (pariśiṣṭa 51–52) lay down that the fine for theft is higher in the case of the higher castes i. e. if the śūdra thief is fined eight times of the value of the article stolen, the vaiśya, kṣatriya and brāhmaṇa thieves were respectively fined 16, 32 and 64 times the price of the article, as each is deemed to know better owing to his higher status and culture. Manu VIII. 380 lays down the general rule that a brāhmaṇa offender was not to be killed whatever the offence might be but he was to be banished from the country allowing him to take with him all his wealth. But there were other provisions and exceptions also. Kāt.[956] (823) states that

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954. सन्धिच्छेदकृतो ज्ञात्वा शूलमाग्राहयेत्प्रभुः । बृह. q. by व्य. प्र. p. 388.

955. अष्टापाद्यं स्तेयकिल्बिषं शूद्रस्य । द्विगुणोत्तराणीतरेषां प्रतिवर्णम् । विदुषोऽतिक्रमे दण्डभूयस्त्वम् । गौ. XII. 12-14.

956. मानवाः सर्व एवाहुः सहोढानां प्रवासनम् । गौतमानामनिष्टं यत्प्राण्युच्छेदादिगर्हितम् । सहोढमसहोढं वा तत्त्वागमितसाहसम् । संगृह्य चिह्नमावेद्य सर्वस्वैर्विप्रयोजयेत् । अथःमन्द्वानगुमाश्च मन्दभक्ता बलान्विताः । कुर्युः कर्माणि नृपतेरामृत्योरिति कौशिकः ॥ कात्या. 823-825 q. by वि. र. p. 332, वि. चि. p. 92, अपरार्क p. 849 (last two verses). अत्र कात्यायनवाक्ये वृत्तस्वाध्यायवतः प्रवासनं, तच्छून्यस्य धनवतः सर्वस्वहरणं, निर्धनस्य तु तथाविधस्य बन्धनादिकमभिप्रेतं ब्राह्मणविषयं चैतत् । वि. र. p. 332; अपरार्क reads प्रगृह्य चिह्नमावेद्य, which seems to mean that his guilt and the signs whereby it was determined should be proclaimed to the public.

the school of the Mānavas declared that thieves caught with the stolen things on them should be at once banished but that the school of Gautama disapproved of this mode, since it is condemned because it entails loss (reduction) of people in the country. The V. R. p. 332 explains this verse as referring to a learned brāhmaṇa. Two more verses of Kāt. (824–825) are quoted by V. R. p. 332 and V. C. p. 92 the first of which provides that a brāhmaṇa who is not learned whether caught with booty or not should be branded (with the appropriate signs) and deprived of all his property, provided his guilt is brought home with certainty and the second provides that a brāhmaṇa thief who is neither learned nor rich but is strongly built should be kept under guard with fetters on his feet, should be fed on meagre food and made to do hard labour for the king till his death. Gaut. XII. 46–48, Nār. (pariśiṣṭa 13–14), Manu IX. 271 and 278, Kāt. (827) hold that the punishment for those who knowingly give food, fire (when they feel cold), water or asylum to thieves or who receive or purchase stolen property or who conceal them are to be punished like the thieves themselves.[957] Yāj. II. 276 prescribes the highest amercement for any one who knowingly gives help to a thief or murderer in the above ways or by directions or by supplying tools or money wherewith to go to a place for committing the offence.

In certain cases a person could take without being liable to be punished as a thief certain things belonging to another even if he had not the latter's permission. Gaut. XII.[958] 25, Manu VIII. 339 (= Matsya 227. 112–113), Yāj. II. 166 allow a person of the three higher castes to take grass, fuel-sticks, flowers of trees and plants for feeding cows and for the worship of fire from any place as if they belonged to himself and also fruits of trees that were not enclosed. In such cases he would not be liable to a fine nor does he incur sin (Kullūka on Manu VIII. 339). A smṛti passage stating that if a man takes

957. Compare sec. 212 (about harbouring an offender) and 411 (on receiving stolen property) of the I. P. C.

958. गोऽग्न्यर्थे तृणमेधान्वीरुद्वनस्पतीनां च पुष्पाणि स्ववदाददीत फलानि चापरिवृतानाम्। गौ. XII. 25. अपरार्क p. 773 remarks that this is so only when there is difficulty in getting these (आपदि.) यत्पुनरुक्तम्-तृणं वा यदि वा काष्ठं पुष्पं वा यदि वा फलम्। अनापृच्छन्हि गृह्णानो हस्तच्छेदनमर्हति। इति-तद् द्विजव्यतिरिक्तविषयमनापद्विषयं वा गवादिव्यतिरिक्तविषयं वेति। मिता. on या. II. 166; अपरार्क p. 774 says तदनापद्गतशूद्रादिविषयम्'.

grass or fuel or flowers or fruits without permission deserves to have his hand cut off is explained by the Mit. (on Yāj. 166), Aparārka p. 774 and others as meant to apply to persons other than *dvijas* or as meant to refer to a case where they are taken by a person who has really no difficulty in securing these or where these are not taken for the use of cows or for worship. This matter had been a subject of discussion from ancient times. Āp. Dh. S.[959] (I. 10. 28. 1-5) contains a discussion from which it appears that Kautsa, Hārīta, Kāṇva and Puṣkarasādi were of the opinion that whatever (however trifling or in whatever circumstances) a man took without the consent of the owner, he became a thief; that Vārṣyāyaṇi held that there were exceptions to this rule viz. that owners should not forbid the taking (of a small quantity of) grain in pods (such as *mudga* or *māṣa*) or grass for bulls yoked to carts, but that if large quantities even of these were taken there would be theft. Śānti 165. 11-13, Manu XI. 16-18 and Yāj. III. 43 state that when a brāhmaṇa or other person has fasted for three days because he has had no grain with him, he may on the 4th day take grain for one day's meal from anywhere he can get, whether from a threshing floor or from a field or a house, and that if the owner questioned he should declare to him the reason, but a person of a lower caste should not in this way take grain belonging to one of a higher caste, unless the latter pursues a sinful course or does not perform the duties of his caste. Vyāsa quoted by Sm. C. I. p. 175 allows a man to commit even theft, when he is in distress for food, first from a person of a lower caste, then from one of the same caste and then from one of a higher caste. Manu VIII. 341 (= Matsya 227. 110, 114), Nār. (prakīrṇaka 39), Śaṅkha and Kāt. (822A) state that a traveller whose food has run out may take from another's land without being liable to punishment two sugarcane stalks, two *mūlakas* (esculent roots), two cucumbers or melons, five mangoes or promegranate fruit

959. यथा कथा च परपरिग्रहमभिमन्यते स्तेनो ह भवतीति कौत्सहारीतौ तथा काण्वपुष्करसादी। सन्त्यपवादाः परपरिग्रहेष्विति वार्ष्यायणिः। शम्योषा युग्यघासो न स्वामिनः प्रतिषेधयन्ति। अतिव्यवहारो व्यृद्धो भवति। सर्वत्रानुमतिपूर्वमिति हारीतः। आप. ध. सू. I. 10. 28. 1-5.

960. आपत्सु विहितं स्तेयं विशिष्टसमहीनतः। हीनादादेयमादौ स्यात्समाद्वा तदनन्तरम्। व्यास q. by स्मृतिच. I. p. 175 ; शान्तिपर्व 141. 395 आपत्सु......विशिष्टं च महीयसः। विप्रेण प्राणरक्षार्थं कर्तव्यमिति निश्चयः।

and a handful of dates and of such corn as rice, wheat, gram &c.[961]

Sāhasa (crimes of violence). Manu VIII. 332, Kauṭ. III. 17, Nār. XVII. 1, Yāj. II. 230, Kāt. (795-796) define sāhasa[962] as any act which is done with violence in defiance of or in spite of the presence of royal officers or guards or people. The word sāhasa is a derivative from 'sahas' meaning 'force' (Nār. XVII. 1). Sometimes it is distinguished from theft (as in Manu VIII. 332, Kauṭ. III. 17 and Nār. XVII. 12) by saying that theft consists in depriving a person of his wealth stealthily (without force), while in sāhasa there is the use of force or violence[963]. Nār. XVII. 2 and Bṛ. (S. B. E. vol. 33 p. 359 verse 1) state that sāhasa[964] is of four kinds viz. manslaughter, theft, violence to the wives of others, and the two kinds of *pāruṣya* (treated as one head). Although these topics can be comprehended under sāhasa, they are generally dealt with separately in the smṛtis and digests as a matter of convenience and in order to provide heavier punishment for crimes of violence[965], since a man guilty of a crime of violence is a worse sinner than one guilty of abuse, theft or assault (Manu VIII. 345 and Mit. on Yāj. II. 230) and Manu VIII. 244 enjoins upon the king not to tolerate for a moment a man guilty of violence. The

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961. तिलमुद्गमाषयवगोधूमादीनां सस्यमुष्टिग्रहणेषु न दोषः पथिकानाम्। शङ्ख q. by स्मृतिच. I. p. 176; त्रपुषे वारुके द्वे तु पञ्चाम्रं पञ्चदाडिमम्। खर्जूरबदरादीनां मुष्टिं गृह्णन दुष्यति। बृह. and कात्या. acc. to गृह. र. p. 520; चणकव्रीहिगोधूमयवानां मुद्गमाषयोः। अनिषिद्धैर्ग्रहीतव्यो मुष्टिरेकः पथि स्थितैः॥ q. by मिता. on या. II. 275.

962. स्यात्साहसं त्वन्वयवत् प्रसभं कर्म यत्कृतम्। निरन्वयं भवेत्स्तेयं हृत्वापव्ययते च यत्॥ मनु. VIII. 332; साहसमन्वयवत् प्रसभकर्म। निरन्वये स्तेयमपव्ययने च। अर्थशास्त्र III. 17; सहसा क्रियते कर्म यत्किञ्चिद्बलदर्पितैः। तत्साहसमिति प्रोक्तं सहो बलमिहोच्यते॥ नारद XVII. 1; सहसा यत्कृतं कर्म तत्साहसमुदाहृतम्। सान्वयस्त्वपहारो यः प्रसह्य हरणं च यत्। साहसं च भवेदेवं स्तेयमुक्तं विनिह्नवे॥ कात्या. 795-796 q. by स. वि. pp. 451, 457, स्मृतिच. II, p. 316 and वि. र. p. 287 (the last two quote 796 only). स्मृतिच. II. 316 explains: अन्वयो रक्षणकालक्रमप्राप्तपालकनरनैरन्तर्यं, तस्मिन्सति योऽपहारः स सान्वयोऽपहारः.

963. तस्यैव भेदः स्तेयं स्याद्विशेषस्तत्र दृश्यते। आधिः साहसमाक्रम्य स्तेयमाधिश्छलेन तु॥ नारद XVII. 12. व्य. प्र. p. 385 explains: आधिः पीडा धनापहरणादिद्वारा आक्रम्य प्रसह्य परस्य क्रियमाणः क्लेशः साहसरूपं स्तेयम्। छलेन क्रियमाणः आधिः केवलस्तेयमित्यर्थः.

964. मनुष्यमारणं चौर्यं परदाराभिमर्शनम्। पारुष्यमुभयं चेति साहसं स्याच्चतुर्विधम्। बृह. q. by स्मृतिच. II. p. 312, व्य. प्र. p. 392.

965. तदिदं साहसं चौर्यवाग्दण्डपारुष्यस्त्रीसंग्रहणेषु व्यासक्तमपि बलदर्पावष्टम्भोपाधितो भिद्यते इति दण्डातिरेकार्थं पृथगभिधानम्। मिता. on या. II. 230.

V. May. (text p. 2) says that in differentiating *steya* from *sāhasa* the maxim of 'cows' and 'bulls' is applicable[966].

Sāhasa is divided by Nār. XVII. 3-6 and Bṛ. (S. B. E. 33 p. 363 verse 24) into three varieties, viz. the lowest (destruction, abuse and trampling of fruits, roots, water, agricultural implements), middling (destruction &c. of clothes, food and drink, household utensils), highest (killing with weapons or poison, violence to others' wives and whatever causes pain to sentient beings). These three kinds are respectively punished with the three kinds of punishments described above (pp. 393-94). The principal crimes included under sāhasa in its narrow sense are homicide, rape and robbery. Rape will be dealt with under *strīsaṁgrahaṇa*. Bṛ.[967] states the general rule that one guilty of murder by violence should be punished with death and not with fines (S. B. E 33 p. 363 v. 29). To this the brāhmaṇa offender was an exception (Manu IX. 241), who was only to be banished. Manu IX. 242 introduces another exception viz. persons other than brāhmaṇas when guilty of the great sins (specified in IX. 235) through negligence should be only deprived of all their property but if they murder a man intentionally then only are they to be sentenced to death. Manu IX. 232 and Viṣṇu Dh. S. V. 9-11 provide the punishment of death for those who fabricate false royal edicts, or who tamper with the loyalty of the elements of the State or who kill women, children and brāhmaṇas. Baud. Dh. S. I. 10. 20-21, Bṛ. and Vyāsa prescribe[968] that if a brāhmaṇa is killed by a kṣatriya, vaiśya or śūdra, the king should sentence

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966. स्त्रीसंग्रहणवाक्पारुष्यदण्डपारुष्याणां साहसभेदत्वेपि पृथङ्निर्देशो गोबलीवर्दन्यायेन । व्य. मयूख p. 2. When a man says गाव आनीयन्तां बलीवर्दाश्च the separate mention of *balīvardas* (bulls) that can be included under the word 'gāvaḥ' is due to the fact that bulls, being more intractable than cows, special attention must be paid to manage them. अपरार्क p. 1048 (on Yāj. III. 230) employs the same maxim in a similar connection 'गोबलीवर्दन्यायेन च पौनरुक्त्यपरिहारः'.

967. साहसं पञ्चधा प्रोक्तं वधस्तत्राधिकः स्मृतः । तत्कारिणो नार्थदण्डैः शास्या वध्याः प्रयत्नतः ॥ बृह. q. by वि. चि. p 105. The word 'vadha' has two senses, (1) death and (2) corporal punishment. Here वध means death.

968. क्षत्रियादीनां ब्राह्मणवधे वधः सर्वस्वहरणं च तेषामेव तुल्यापकृष्टवधे यथाबलमनुरूपान्दण्डान् प्रकल्पयेत् । बौ. ध. I. 10. 20-21 ; ज्ञात्वा तु घातकं सम्यक् ससहायं सबान्धवम् । हन्याच्चित्रवधोपायैरुद्वेजनकरैर्नृपः ॥ व्यास q. by स्मृतिच. II. 312 and व्य. प्र. p. 394 ; प्रकाशघातका ये तु तथा चोपांशुघातकाः । ज्ञात्वा सम्यग्धनं हृत्वा हन्तव्याः विविधैर्वधैः ॥ बृह. q. by स्मृतिच. p. 312 and व्य. प्र. p. 394. वि. चि. p. 105 reads राज्ञा सम्यग्धनं हृत्वा हन्तव्याः and explains 'सम्यग्वधः सकृच्छिरश्छेदः, विविधो वधः अङ्गशास्तिपूर्विका प्राणशास्तिः'.

the offender to death in various ways and confiscate all his property, but if a man kills another of his own caste or of a lower caste then the king may punish the offender with some punishment appropriate to the crime and the strength of the offender. In IV. 11 Kauṭ. provides sentences of death in various ways for murder following ancient śāstras, but remarks that if murderers have not been guilty of cruelty they should simply be sentenced to death without torture or the like[969]. One special rule deserves notice. Gaut. 22. 12, Āp. Dh. S. I. 9. 24 6-9, Manu XI. 87, Vas. 20. 34, Yāj. III. 251 prescribe the same prāyaścitta for murdering a brāhmaṇa woman who is an *ātreyī* as for one who kills a brāhmaṇa male. The different meanings of 'ātreyī' given from ancient times are noted below[970]. Texts

969. एते शास्त्रेष्वनुगताः क्लेशदण्डा महात्मनाम्। अक्लिष्टानां तु पापानां धर्म्यः शुद्धवधः स्मृतः ॥ अर्थशास्त्र IV. 11, last verse.

970. आत्रेय्याश्चैवम् । गौ. 22 12 ; आत्रेयीं च स्त्रियम् । आप. ध. सू. I. 9. 24. 9. आत्रेयी is variously explained. The word occurs as early as the Śat. Br. I. 4, 5, 13 where in explaining why the offerings to Prajāpati are made in a low tone a legend about the goddess 'Vāc' is narrated and it is said that in having sexual intercourse with an ātreyī, a man incurs sin' (तस्मादप्यात्रेय्या योषितैनस्वी). Here the word appears to mean a woman who is in her monthly illness. Vas. (20. 35-36) defines ātreyī as a woman who has taken the purificatory bath on the 4th day after her monthly illness begins and derives the word from अत्र 'आत्रेयीं वक्ष्यामो रजस्वलामृतुस्नातामात्रेयीमाहुः । अत्र ह्येष्यदपत्यं भवतीति.' Vasiṣṭha either cites or summarises a Vedic passage (as stated by Viśvarūpa) which means 'here (i. e. in the womb of this woman) a child is to come'. In SBE vol. 14 p. 107 the same is translated as 'if the husband approaches her at that (time) he will have offspring'. But this is not correct. 'Eṣyat' qualifies 'apatyam' and is not in the masculine. Vas. derives the word from अत्र and the root इ. Viṣṇu Dh. S. 36.1 and 50.9 appear to hold that ātreyī means a woman of the Atrigotra. Haradatta on both Gaut. and Āp. explains ātreyī as Vasiṣṭha does and states that others interpreted it as 'अत्रिगोत्रा'; on या. III. 251 (तथात्रेयीनिषूदकः) विश्वरूप explains आत्रेयी as a woman within 16 days from the beginning of the monthly illness and quotes वसिष्ठ 20.36 and also says 'आत्रेयीं अत्रिगोत्रां वर्णयन्ति । तदपि युक्तमेव । तथा चाम्नायः ततोऽत्रिः सम्बभूवेत्युक्त्वा तस्मादप्यात्रेय्या योषितैनस्विनमाहुः । तेनोभे सम्यग्व्याख्याने एव ।'. From Śabara on Jai. VI. 1. 7 it appears that some derived the word as 'अत्र कुक्षावस्या विद्यत इत्यात्रेयी', while Śabara himself preferred the meaning 'अत्रिगोत्रा' and regarded the prohibition to kill an ātreyī as simply meant for praising that gotra 'तथा गोत्रप्रशंसार्थं आत्रेय्या अवधसङ्कीर्तनम् । न चापन्नसत्त्वा आत्रेयी । गोत्रं ह्येतत् । न हि अत्रशब्दादयं तद्धित उत्पन्नः । समर्थानां हि तद्धित उत्पद्यते । न च अत्रशब्दस्य सामर्थ्यमस्ति' (on जै. VI. 1. 9). यम quoted by परा. मा. II. 1 p. 103 gives two meanings 'जन्मप्रभृति संस्कारैः संस्कृता मन्त्रवत्तु या । गर्भिणी त्वथ वा या स्यात्तामात्रेयीं विनिर्दिशेत् ॥'. The अमरकोश gives आत्रेयी as a synonym of रजस्वला.

like Āp. I. 9. 24. 1–5, Gaut. XXII prescribe different prāyaścittas for murder depending upon the castes and sexes of the murderer and the murdered. These will be briefly dealt with under prāyaścitta later on. In certain cases acc. to Manu VIII. 291–292, Yāj. II. 298–299, Kauṭ. IV. 13, though death or injury to persons or loss of property results, no punishment was prescribed viz. when the nose-string of bulls yoked to a cart snaps, when the yoke breaks, when the cart swerves on one side owing to the unevenness of the ground, when the axle or wheel breaks or when the leather thongs with which the several parts of the cart are tied give way, or when the rope cast round the necks of bulls or the reins break or when in spite of the driver loudly calling upon a person to move aside from the way an accident occurs. But Manu VIII. 293, 294 (= Matsya 227. 95–96) provide that where through the want of skill of the driver knowingly engaged by a master the cart is overturned and injury is caused, the master should be fined 200 paṇas, but if the driver employed be known to be skilful, then when injury is caused the driver should be fined (and not the employer). Further if the driver, though seeing that the road is blocked by cattle or other carts, rashly drives and kills men and animals he should be punished (Manu VIII. 295). It is stated by Nār. (pāruṣya 32, S. B. E. vol. 33 p. 212) that the father is not liable for his son's offence, nor is the owner of a horse, dog or ape liable to punishment (for injury caused by any of these) provided they are not set up (to do harm) by the owner. If a driver kills a man by rash or negligent driving he is to be punished like a thief; if he kills any one of the larger animals (such as a cow, a horse, a camel or elephant) the punishment would be half of the preceding; if he kills one of the inferior animals, the fine would be two hundred. Kauṭ. III. 19, Manu (VIII. 285), Yāj. II. 227–229 and Viṣṇu Dh. S. V. 55–59 prescribe graduated fines for the destruction of trees, plants and branches, flowers and fruits according to their usefulness and sanctity. The smṛtis made a distinction as regards punishments between crimes of violence and crimes due to negligence or mistake. For example, Manu VIII. 264 (= Matsya 227. 30) prescribes a fine of 500 paṇas for depriving a man of his house, garden or field by threats of violence, but only prescribes a fine of two hundred if a man deprives another of his house &c. by mistake.

Various rules were laid down about inciters or abettors. Yāj. II. 231 and Kauṭ.[971] III. 17 prescribe for the man who incites another to crimes of violence double the punishment to be inflicted on the perpetrator himself and four times for one who incites another by assuring him 'I shall give as much money as will be required'. Kāt. (798) and Bṛ.[972] (S. B. E. 33 p. 363 vers 31) prescribe that if several violently beat a man to death, he who gives the fatal blow on a vital part is declared to be the murderer and is to suffer the full punishment for murder. Kāt. (832–834)[973] and Bṛ. (S. B. E. 33 p. 364 verse 32) provide that he who commences a crime of violence, who is a helper, who gives advice as to the way (in which *sāhasa* is to be carried out), who gives refuge (asylum) to the offender or supplies weapons, who gives food to wrongdoers, who incites (offenders) to put up a fight, who shows how the person (killed) is to be destroyed, who connives (at the commission of an offence), who exposes the faults (of the person killed), who gives his approval (to the offence), who though able does not forbid or prevent the commission of the offence—all these are (practically) perpetrators of the crime and the king should award punishment according to their ability and their guilt. Vide also Āp. Dh. S. II. 11. 29. 1.[974] For those who begin an offence or abet its commission Bṛ. (S. B. E. 33 p. 364 verse 32) prescribes half the punishment prescribed for the wrongdoer.[975] Yāj. (II. 232–242) enumerates several kinds of offences as allied to *sāhasa* and prescribes punishments therefor, such as breaking a house that is closed under seal, causing harm to neighbours and *kulikas*

971. यः साहसं प्रतिपत्स्यतेति कारयति स द्विगुणं दद्यात् । यावद्धिरण्यमुपयोक्ष्यते तावद् दास्यामीति स चतुर्गुणं दण्डं दद्यात् । अर्थशास्त्र III. 17.

972. एकस्य बहवो यत्र प्रहरन्ति रुषान्विताः । मर्मप्रहारको यस्तु घातकः स उदाहृतः ॥ बृह. q. by वि. र. p. 373, व्य. प्र. p. 395 ; मर्मघाती तु यस्तेषां यथोक्तं दापयेद्दमम् । बृह. q. by स्मृतिच. II. p. 312, वि. र. p. 373.

973. आरम्भकृत्सहायश्च तथा मार्गानुदेशकः । आश्रयः शस्त्रदाता च भक्तदाता विकर्मिणाम् ॥ युद्धोपदेशकश्चैव तद्विनाशप्रदर्शकः । उपेक्षाकारकश्चैव दोषवक्तानुमोदकः । अनिषेद्धा क्षमो यः स्यात्सर्वे ते कार्यकारिणः । यथाशक्त्यनुरूपं तु दण्डमेषां प्रकल्पयेत् । कात्या. q. by स्मृतिच. II. p. 312, परा. मा. III. p. 455, वि. र. p. 375, व्य. प्र. p. 395. There are slight differences in readings.

974. प्रयोजयिता मन्ता कर्तेति स्वर्गनरकफलेषु कर्मसु भागिनः । आप. ध. सू. II. 11. 29. 1.

975. आरम्भकृत्सहायश्च दोषभागी तदर्धतः ॥ बृह. q. by परा. मा. III. p. 455, वि. र. p. 374, व्य. प्र. p. 395. Compare sections 119 and 120 of the I. P. C. for lesser sentences in the case of abettors.

(one's agnates), abandoning one's parents or sons or brothers or sisters even though they be not *patita*, sexual intercourse with a widow, (intentional) defilement of the higher castes by cāṇḍālas, making counter-feit coins or false weights and measures, giving quack medicines to royal officers or other men. These are all passed over here.

CHAPTER XXV

STRĪSAṄGRAHAṆA (Adultery or unlawful intercourse with a woman).

The Mit. (on Yāj. II.[976] 283) states that *saṅgrahaṇa* means the unlawful coming together of a man and a woman for sexual enjoyment. Bṛ. (S. B. E. 33 p. 365 verses 1–2) says that sinful[977] *saṅgrahaṇa* is of three kinds, viz. brought about by force, deceit or sensual passion. The first (which is rape) occurs when intercourse is had in a secluded place against the will of a woman, or with a woman who is intoxicated or is disordered in mind or is under a mistake or when she raises a cry; the second occurs when a woman is brought to one's house by some trick or pretence, an intoxicant (such as *Dhaturā*) is administered to her or her mind is brought under control (by chants or otherwise) and sexual intercourse takes place; the third occurs when intercourse takes place by conveying (passion) to each other by means of the eyes (glances) or by employing a go-between and when the parties are drawn to each other by the temptation of beauty or of wealth. This last is again of three kinds acc. to Vyāsa and Bṛ. (S. B. E. 33 p. 365–66 verses 6–8 q. by Sm. C. II. p. 8) viz. trifling, middling and grave. The first is characterised by winking at a woman, smiling at her, sending a go-between, touching her ornaments or clothes; the second by the sending of flowers, unguents, fruits, incense, food, clothes, and indulging in private talks; the third is characterised by lying on the same bed, dalliance, kissing and embraces. Strīsaṅgrahaṇa by force (that is rape) is really included under

976. स्त्रीपुंसयोर्मिथुनीभावः संग्रहणम्। मिता. on या. II. 283; संग्रहणं परस्त्रिया सह पुरुषस्य सम्बन्धः। स्मृतिच. II. p. 8.

977. पापमूलं संग्रहणं त्रिप्रकारं निबोधत। बलोपधिकृते द्वे तु तृतीयमनुरागजम्॥ अनिच्छन्त्या यत्क्रियते मत्तोन्मत्तप्रमत्तया। प्रलपन्त्या च रहसि बलात्कारकृतं तु तत्। छद्मना गृहमानीय दत्त्वा वा मद्यकार्मणम्। संयोगः क्रियते यत्र तदुपधिकृतं विदुः॥ अन्योन्यचक्षूरागेण दूतीसंप्रेषणेन वा। कृतं रूपार्थलोभेन ज्ञेयं तदनुरागजम्। बृह. q. by अपरार्क p. 854, स्मृतिच. II. p. 8, व्य. प्र. p. 397, वि. र. p. 379, परा. मा. III. p. 462. There are many various readings. The स्मृतिच. explains कार्मण as कर्मणा वशीकरणम्. Compare section 375 of the I. P. C. with the first kind, sec. 493 with the 2nd kind and sections 497, 498 with the 3rd kind.

sāhasa,[978] as stated by the Madanaratna, the V. P. pp. 396–397 and others. The punishments for rape were very heavy. Bṛ. (S. B. E.[979] 33 p. 366 verse 10) states that if a man commits rape on a woman of the same caste, he was to forfeit all his property, to have his penis and testicles cut out and was to be paraded on the back of an ass, that if the woman raped was of a lower caste, then half of this punishment was to be awarded and if she was of a higher caste, he was to be sentenced to death together with confiscation of all property. Kāt. (830) prescribes that when[980] a man has forcibly had sexual intercourse with a woman capital punishment is to be inflicted inasmuch as it is a violation of (proper) conduct. When sexual intercourse was had by deceit the man was punished with confiscation of all property, with branding on the forehead of the sign of the female private parts and banishment from the town (Bṛ. in S. B. E. 33 p. 366 verse[981] 11). Here also the rule of Bṛ. cited above (about the reduction of sentence according to the caste of the woman concerned) applies. In the case of rape and sexual intercourse by deceit the woman was not at all punished[982] but she had to undergo a penance (prāyaścitta) of *kṛcchra* or *parāka* for contact with a male other than her husband and till she performed the prāyaścitta she was to be kept well-guarded in the house, was to remain dirty (i. e.

978. तत्र बलात्कारकृतं स्त्रीसंग्रहणं साहसान्तर्भूतत्वात् तत्प्रकरणे अधुनैव दर्शितम्। मदनरत्न. Compare sec. 376 of the I. P. C. which prescribes transportation for life as the maximum punishment for rape. Vide Russell on Crimes (9th ed. 1936) vol. I. pp. 613–614 for the ancient law of England (which provided death sentence and the sentence of castration and loss of eyes) and modern law which provides penal servitude for life as the maximum.

979. सहसा कामयेद्यस्तु धनं तस्याखिलं हरेत्। उत्कृत्य लिङ्गवृषणौ भ्रामयेद्गर्दभेन तु॥ दमो नेयः समायां तु हीनायामर्धिकस्ततः। पुंसः कार्योऽधिकायां तु गमने संप्रमापणम्। बृह. q. in स्मृतिच. II. p. 320, व्य. प्र. pp. 396–397, परा. मा. III. 466.

980. स्त्रीषु वृत्तोपभोगः स्यात्प्रसह्य पुरुषो यदा। वधे तत्र प्रवर्तेत कार्यातिक्रमणं हि तत्॥ कात्या. 830 q. by स्मृतिच. II. p. 320, व्य. प्र. p. 397, व्य. म. p. 244. All these three works differ as to the circumstances in which this verse applies.

981. छद्मना कामयेद्यस्तु तस्य सर्वहरो दमः। अङ्कयित्वा भगाङ्केन पुरान्निर्वासयेत्ततः॥ बृह. q. by स्मृतिच. II. p. 320, वि. र. p. 389.

982. अनिच्छन्ती तु या भुक्ता गुप्तां तां वासयेद्गृहे। मलिनाङ्गीमधःशय्यां पिण्डमात्रोपजीविनीम्। कारयेन्निष्कृतिं कृच्छ्रं पराकं वा समे गताम्। हीनवर्णोपभुक्ता या त्याज्या वध्याथवा भवेत्। बृह. q. by स्मृतिच. II. p. 321, वि. र. 400. For कृच्छ्र and पराक see मनु. XI. 212 and 216. The स्मृतिच. II. p. 320 says: 'तथापीतरपुरुषसंसर्गपापं भार्यायाः सम्पद्यते। ततश्चासंव्यवहार्यता अत्रापि चण्डालयामिव समाना। सा प्रायश्चित्तेन क्वचिदपैति क्वचिन्नेत्याह बृहस्पतिः। अनिच्छन्ती &c.'

not to deck herself or apply or use perfumes &c.), to lie on the ground (not on a bed-stead or couch), was to receive bare maintenance. After performing prāyaścitta she was restored to her former position. Acc. to Yāj. II. 286 and Bṛ. (S. B. E. 33 p. 366 verse 12), for adultery (in which there is consent) the highest fine is prescribed for the male in the case of a woman of the same caste, half of this in the case of a woman lower in caste (than the paramour), but when adultery is committed with a woman of a higher caste the male shall be put to death and the woman shall have her ears and the like cut off. Vide Shakespeare's Othello IV. 1, where Othello exclaims 'I see that nose of yours but not that dog I shall throw it to'. There were other sages who were humane and opposed to the punishment of disfigurement by way of the cutting of the ear or the nose. Yama[982a] states that in the case of a woman guilty of adultery at her will, there was to be no punishment of death or disfigurement, but only abandonment. Kāt. (487) lays down the general rule that in all offences women should be sentenced to half the fine in money which is prescribed for a male and that when the punishment is death for a male the punishment for a woman would be cutting off a limb (vide note 626).

Nār. (XV. 73–75) holds[983] that sexual intercourse with the step-mother, mother's sister, mother-in-law, the paternal or maternal uncle's wife, father's sister, a friend's or pupil's wife, sister, sister's friend, daughter-in-law, daughter, the wife of one's vedic teacher, a woman of the same gotra, a woman that has sought protection, with the queen or an ascetic woman (*pravrajitā*) or a wet-nurse or a virtuous wife (*sādhvī*) or a woman of a higher caste is incestuous and the punishment to be prescribed for this crime is the excision of the penis and no less. Vide Manu XI. 170–71, Kauṭ. IV. 13,[984] Yāj. III. 231–233, Matsya-

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982a. स्वच्छन्दगा च या नारी तस्यास्त्यागो विधीयते । इति यमस्मरणात् ।... न वधं न च वैरूप्यं वधं स्त्रीणां विवर्जयेत् । स्त्रीणां महापराधे वधं कुर्वन् विसर्जनमेव तासां कुर्यादित्यर्थः । वैरूप्यं कर्णनासाद्यङ्गविकर्तनं तदपि भर्त्रा न कदाचित्कार्यमित्यर्थः । न चैव स्त्रीवधं कुर्यान्न चैवाङ्गविकर्तनम्–इति तेनैवोक्तत्वात् । स्मृतिच. II. p. 246; vide परा. मा. III. p. 477 also.

983. माता मातृष्वसा श्वश्रूर्मातुलानी पितृष्वसा । पितृव्यसखिशिष्यस्त्री भगिनी तत्सखी स्नुषा । दुहिताचार्यभार्या च सगोत्रा शरणागता । राज्ञी प्रव्रजिता धात्री साध्वी वर्णोत्तमा च या । आसामन्यतमां गत्वा गुरुतल्पग उच्यते । शिश्नस्योत्कर्तनं तस्य नान्यो दण्डो विधीयते । नारद XV. 73–75. The वि. र. p. 392 remarks: मातात्र जननीव्यतिरिक्ता पितृपत्नी । शुश्रूषाविषयमेतत्.

984. मातापित्रोर्भगिनीं मातुलानीमाचार्याणीं स्नुषां दुहितरं भगिनीं वाधिचरतः लिङ्गच्छेदनं वधश्च । सकामा तदेव लभेत । अर्थशास्त्र IV. 13.

purāṇa 227. 139–141, which latter (three) prescribe excision of the penis and death by way of punishment (except for a brāhmaṇa) and expiation and for the woman (if she was a consenting party) death sentence. Bṛhad-Yama III. 7, Āp. (in verse) IX. 1 (Jivananda ed.) and Yama (Ānandāśrama) 35 prescribe that there is no expiation except that of entering fire for incest with mother, teacher's wife, sister or daughter. It is remarkable that Kauṭ.[985] and Yāj. (II. 293) prescribe only a fine of 24 paṇas for adultery with a female ascetic, while Nār. XV. 74 and Matsya 227. 141 deem it a most heinous offence. The explanation probably lies in the fact that Kauṭ. and Yāj. refer to female ascetics of the lowest castes not following the orthodox religion, while Nār. refers to nuns of a higher order. Vide Manu VIII. 363 also. For forcible intercourse with a prostitute against[986] her will Kauṭ. IV. 13 and Yāj. II. 291 prescribe a fine of 12 and 24 paṇas respectively. For unnatural offences or offences against the order of nature, Kauṭ. IV. 13, Yāj. II. 289, 293, Viṣṇu Dh. S. V. 44, Nār. XV. 76 provide fines of 12, 24, 100, 500 paṇas[987].

Manu IV. 134 (= Anuśāsana 104. 21 = Mārkaṇḍeya-purāṇa 34. 62–63) 'forbids a man to have sexual intercourse with another's wife and states that there is nothing so detrimental to long life as that. There are stray indications in the Vedic literature about sexual intercourse outside marriage. Vide H. of Dh. II. pp. 637–639. In Ṛg. I. 92. 4 (*adhi peśāṁsi vapate nṛtūr-iva*) there appears to be a reference to a dancing girl or *hetaira*. Wives hating (or proving false) to their husbands are believed to go to Hell in Ṛg. IV. 5. 5 (*patiripo na janayo durevāḥ*). In Ṛg. II. 29. 1 the sage prays to the Ādityas 'remove away from me sin as a woman who gives birth to a child in secret removes it' (*āre matkarta rahasūr-ivāgaḥ*). The gambler (in Ṛg. X. 34. 4) states 'others have intercourse with his wife' (*anye jāyām pari mṛśantyasya*). The word *puṁścalī* occurs in Vāj. S. XXX. 22. We have already seen (H. of Dh. II. pp. 576, 1098) how in the Varuṇapraghāsa (one of the Cāturmāsyas) the wife of the sacrificer had to confess if she had a lover and how even after

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985. प्रव्रजितागमने चतुर्विंशतिपणो दण्डः । सकामा तदेव लभेत । अर्थशास्त्र IV. 13.

986. रूपाजीवायाः प्रसह्योपभोगे द्वादशपणो दण्डः । अर्थशास्त्र IV. 13; तथा प्रव्रजिता नारी वर्णोत्कृष्टा तथैव च । इत्यगम्याश्च निर्दिष्टास्तासां तु गमने नरः । शिश्नस्योत्कर्तनं कृत्वा ततस्तु वधमर्हति । मत्स्य. 227. 141.

987. स्त्रियमयोनौ गच्छतः पूर्वः साहसदण्डः पुरुषमधिमेहतश्च । मैथुने द्वादशपणस्तिर्यग्योनिष्वनात्मनः । अर्थशास्त्र IV. 13.

she confessed to having had one she was allowed to co-operate in the sacrifice on undergoing an expiation. After a man performed the solemn sacrifice called Agnicayana he was enjoined (Tai. S. V. 6. 8. 3)[988] not to approach a śūdra woman and after he performed Agnicayana twice he was not to approach another's wife (H. of Dh. vol. II. p. 1255).

The punishment for saṅgrahaṇa (rape and adultery) varied according to the caste of the man and the woman, according as the woman was married or unmarried and according as she was guarded (*guptā*) or unguarded. Vide Gaut. XII. 2, Vas. XXI. 1-5, Manu VIII. 359, Viṣṇu Dh. S. V. 41, Yāj. II. 286, 294, Nār. XV. 70 (as to higher or lower caste of offender), Gaut. XII. 3, Manu VIII. 374-378, 382-385, Kauṭ. IV. 13 (about offence against guarded or unguarded woman), Manu VIII. 364-370, Yāj. II. 285, 287, Kauṭ. IV. 12, Nār. XV. 71-72 (about maidens). Further the ancient sūtras and smṛtis prescribe more severe sentences than later smṛtis. Details of these matters are passed over here for want of space and as being now of academic interest only. But some examples may be noted. Gaut. XXIII. 14-15 and Manu VIII. 371 prescribe for an adulteress death by being devoured by dogs, but Yāj II. 286 softened the rigour of this. Āp. Dh. S. (II. 10. 26. 20-21) prescribed the penalty of cutting the penis and testicles for the male if guilty of adultery with a married woman, but only confiscation of all property if he committed adultery with an unmarried woman. But Yāj. II. 288, Manu VIII. 366, Nār. XV. 72 went so far as to say that if a man had sexual intercourse with a maiden (of the same caste) who encouraged his advances, then there is no offence punishable by the king, but he was to bestow ornaments on her, honour her and must marry her.

It has further to be noted that Yāj. II. 290 and Nār. (XV. 79)[989] make it punishable to visit a dāsī kept by a man in his own house or outside and Yāj. prescribes the fine of 50 paṇas for so doing. Vide H. of Dh. vol. II. pp. 637-639 about prostitutes. But Manu VIII. 362 states that the rules making conversation with others' wives in lonely places punishable does not hold good in the case of the wives of actors, singers

988. नाग्निं चित्वा रामामुपेयादयोनौ रेतो धास्यामीति न द्वितीयं चित्वान्यस्य स्त्रियमुपेयात न तृतीयं चित्वा कां चन नोपेयात्। तै सं. V. 6. 8. 3-4.

989. आस्वेव तु भुजिष्यासु दोषः स्यात्परदारवत्। गम्या अपि हि नोपेया यत्ताः परपरिग्रहाः॥ नारद XV. 79.

and those who live on the earnings of their wives, since they themselves introduce their wives to others and make them mix among men (while they themselves remain concealed).

Strīpuṃdharma (duties of husband and wife). Most of the matters falling under this head have been dealt with in H. of Dh. vol. II. pp. 556–592. The liability of the husband or wife for the debts of the other has been already dealt with under *ṛṇādāna*. The rights of partition, inheritance and maintenance will be discussed later on under *dāyabhāga*. Nār. XV. 1 defines this title of law as that in which the rules of the marriage of women and men and other related matters are described. Under this head Nār. speaks of the essential ceremonies of marriage, the rules about selecting a bride and a bridegroom, restrictions as to the caste of the bride, the guardians for marriage, faults or defects in a proposed bride or bridegroom, the forms of marriage, women called *punarbhū* and *svairiṇī*, the practice of *niyoga*, illicit sexual intercourse, punishment of women for adultery, remarriage, *varṇasaṅkara*, mixed castes. In IX. 1 Manu promises that he will dilate upon the obligatory duties of man and wife, whether they are staying together or apart. Manu IX. 2 holds that the first duty of the husband and the males in his family is to keep women dependent and under their control if they become attached to a life of pleasure and Nār. XVI. 30 states that even women of good family come to ruin by independence. The next most important matter acc. to Manu IX. 5 and Bṛ. (S. B. E. 33 p. 367 verse 2)[990] is to guard women against improper attachments however trifling, since if they go astray they bring sorrow to both families (of the husband and of the father). Acc. to Hārīta,[991] Śaṅkha-Likhita,[992] Manu (IX. 7, 9) and others the husband has to guard the wife from the approaches of other men in order to ensure the purity of the issue and by guarding her the husband guards his reputation, family, soul and his *dharma*,

990. सूक्ष्मेभ्योऽपि प्रसङ्गेभ्यो निवार्या स्त्री स्वबन्धुभिः । श्वश्र्वादिभिः गुरुस्त्रीभिः पालनीया दिवानिशम् ॥ बृह. q. by स्मृतिच. II. p. 239, व्य. प्र. p. 405, वि. र. p. 411.

991. तस्माद्रेतोपघाताज्जायां रक्षेत् । जायानाशे कुलनाशः कुलनाशे तन्तुनाशः तन्तुनाशे देवपितृयज्ञनाशः, यज्ञनाशे धर्मनाशः, धर्मनाशे आत्मनाशः, आत्मनाशे सर्वनाशः । तस्मादेनां धर्मशीलां सुगुप्तां पत्नीं रक्षेत् । हारीत q. by स्मृतिच. II. p. 239, वि. र. p. 410, व्य. प्र. p. 405, मदनरत्न.

992. यस्मिन्भावोऽर्पितः स्त्रीणामार्तवे तच्छीलं पुत्रं जनयन्ति यथा नीलवृषेण नीलवृषवत्सप्रभवः श्वेतेन श्वेत एव जायते । एवं योनिरेव बलवती यस्माद्वर्णाः संकीर्यन्ते । शङ्खलिखित q. by वि. र. p. 414, स्मृतिच. II. p. 241, व्य. प्र. p. 408 (at p. 405 reads तादृशं तन्तुं जनयन्ति).

since a woman gives birth to a son similar to the male with whom she consorts or on whom she sets her heart during the days after the monthly illness. Here there is some anticipation of modern Eugenics. Manu IX. 10 was quite clear that women could not be completely guarded by confining them with force in seclusion, that their minds must be occupied in family work as stated by him in IX. 11 and by Bṛ. (S. B. E. 33 p. 368[993] verse 4), that the husband must try to deserve her regard and affection and show her honour (Manu IX. 22–24, 26, Yāj. I. 82). Divorce has been already dealt with in H. of Dh. vol. II. pp. 619–623. Vide 'Selections from Peshwa's *daftar*' vol. 43 p. 112 where the divorce of a woman (*ghaṭasphoṭa*) is ordered because the husband was really a converted Mahomedan who had been illegally admitted to caste after an incorrect method of expiation.

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993. आयव्ययेऽर्थसंस्कारे गृहोपस्कररक्षणे । शौचाग्निकार्ये संयोज्याः स्त्रीणां शुद्धिरियं स्मृता ॥ बृह. q. by व्य. प्र. p. 409.

CHAPTER XXVI

DYŪTASAMĀHVAYA

(Gambling and prize-fighting)

Manu IX. 223, Nār. XIX. 1 and Bṛ. (S. B. E. 33 p. 385 verse 3) define *dyūta* (gambling) as that sport which is carried on with inanimate objects such as dice, pieces of leather, ivory and the like and in which there is a stake, while sport carried on with animate objects such as cocks, pigeons, rams, buffaloes and wrestlers is called *samāhvaya.* The attitude of Manu towards gambling was uncompromising. Manu (IX. 221-222, 224-226) calls upon the king to suppress gambling and prize-fighting in his country as they cause the destruction of the State; he states that gambling is open theft and therefore the king should endeavour to put it down and that the king should punish with corporal punishment all those who engage in gambling or who induce or help others to gamble, and that he should banish gamblers from the city because gamblers residing in the country harass wellconducted subjects by their deceitful tricks. Manu IX. 227 (= Udyogaparva 37. 19) states that in ancient times gambling engendered great enmities and therefore a wise man should not resort to it even for amusement or in jest. Kāt. (934) is to the same effect. Yāj. II. 203 and Kauṭ. III. 20[994] allowed gambling in a central place under State supervision as it led to the detection of thieves. Bṛ.[995] (S. B. E. 33 p. 385 verse 1) refers to this divergence of views: ' Gambling that causes loss of truth, purity and wealth was forbidden by Manu, but others allowed it because it led to the detection of thieves, provided it was carried on in the presence of a master of the gambling hall and provided it yielded revenue to the king'. The person who was in charge of the

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994. द्यूतमेकमुखं कार्यं तस्करज्ञानकारणात् । याज्ञ. II. 203 ; द्यूताध्यक्षो द्यूतमेकमुखं कारयेदन्यत्र दीव्यतो द्वादशपणो दण्डः गूढाजीविज्ञापनार्थम् । अर्थशास्त्र III. 20; ध्रुवं द्यूतात्कलिर्यस्माद्विषं सर्पमुखादिव । तस्माद्राजा निवर्तेत विषये व्यसनं हि तत् । कात्या. q. by वि. र. p. 611.

995. द्यूतं निषिद्धं मनुना सत्यशौचधनापहम् । अभ्यनुज्ञातमन्यैस्तु राजभागसमन्वितम् । सभिकाधिष्ठितं कार्यं तस्करज्ञानहेतुना । बृह. q. by स्मृतिच. II. p. 331, अपरार्क p. 805, वि. र. 611-612.

gambling hall which gamblers made their haunt and who supplied the dice and other instruments of gambling was called *sabhika* and the stake or money agreed to be paid by the defeated gambler to the winning gambler was called *paṇa* or *glaha* (Yāj. II. 199). Nār. XIX. 8 provides an optional method viz. instead[996] of gambling in a hall presided over by a sabhika, gamblers may give the king his share in the stakes, then indulge in gambling openly and if they do so they incur no punishment. Acc. to Yāj. II. 199 as interpreted by Par. M. III. p. 574 and V. P. p. 565 the sabhika was to receive five per cent or $\frac{1}{20}$th part when the stake was 100 paṇas or more and 10 per cent or $\frac{1}{10}$th when the stake was less than 100 paṇas. Aparārka (p. 802) explains that the sabhika was to receive as his fee five per cent from the victorious gambler and ten per cent from the losing gambler. Nār. XIX. 2 prescribes a flat rate of ten per cent on the stake as the fee of the sabhika, while Kauṭ.[997] III. 20 lays down the fee as five per cent and allows the sabhika to charge hire for supplying gambling accessories (such as dice, leather pieces) and for supplying water and accommodation. The sabhika receiving protection from the king was to pay to the king the tax agreed upon by him, was to recover from the defeated gambler the stake (by means of confinement or restraint order) and pay it over to the victor and was to be honest and forbearing[998] (Yāj. II. 200, Kāt. 940, Nār. XIX. 2). Kāt. (937) states that the sabhika[999] may give to the winner the money won out of his own pocket and may recover from the losing gambler within three fortnights or at once if there is fear of losing the money. Kāt. (935)[1000] holds that if gambling was to be allowed it must be carried on openly with an arch constructed near the door in order that respectable people might not be misled (about its real nature) and it should yield revenue to the king. If the sabhika is

996. अथवा कितवा राज्ञे दत्त्वा भागं यथोदितम् । प्रकाशं देवनं कुर्युरेवं दोषो न विद्यते ॥ नारद XIX. 8.

997. जितद्रव्यादध्यक्षः पञ्चकं शतमाददीत काकण्यक्षारलाशलाकावक्रयमुदकभूमिकर्मक्रयं च । अर्थशास्त्र III. 20.

998. प्रसह्य दापयेद्देयं तस्मिन्स्थाने न चान्यथा । जितं वै सभिकस्तत्र सभिकप्रत्यया क्रिया ॥ कात्या. 940 q. by अपरार्क p. 804, वि. र. p. 615.

999. जेतुर्दद्यात्स्वकं द्रव्यं जिताद् ग्राह्यं त्रिपक्षकम् । सद्यो वा सभिकेनैव कितवाद्धनसंशये ॥ कात्या. 937 q. by अपरार्क p. 803, परा. मा. III 575, वि. र. 612.

1000. वर्तेत चेत् प्रकाशं तु द्वारावस्थिततोरणम् । असंमोहार्थमार्याणां कारयेत्तत्करप्रदम् ॥ कात्या. 935 q. by वि. र. p. 611.

unable to make the defeated gambler pay the stake to the victor, the king would make the former pay to the latter provided the gambling was done openly in the presence of the sabhika and a group of gamblers and the king's dues were paid by the sabhika, but not otherwise (Yāj II. 201). Nār. XIX. 6-7 and Yāj. II. 202 provide that when gambling is carried on secretly and without the king's permission or with false dice or other deceitful tricks, the gamblers and the sabhika would not be able to gain their object (i. e. recovering bets won or the fee) and would be liable to punishment, viz. branding on the head (with dog's foot and the like) and banishment. Nār. XIX. 6 adds that the banished gamblers would have wreaths of dice tied round their necks. Kāt. (941) and Bṛ. (S. B. E. 33 p. 386 verse 7) state that a person ignorant of gambling should, if defeated in gambling in private, be released from his liability, but one who is an adept in gambling should not be relieved when defeated; but even an adept in gambling if he has lost the whole of his wealth as a stake should not be made to pay the whole.[1001] In disputes among gamblers, in deciding on victory or in the matter of gain to the winner, and as regards the question of false dice the keeper of the gaming house, if honest, is the final authority[1002] (Kāt. 942). Nār. XIX. 4, Yāj. II. 202, Bṛ. (S. B. E. 33 p. 386 verse 6), Kāt. (943) provide that when there is a dispute as to success or defeat the king should appoint gamblers to decide the dispute and gamblers will also be the witnesses in such a dispute (in spite of the rule stated above on p. 335 that gamblers are not competent witnesses), but if the gamblers are alleged to be inimical to the disputants the king may then[1003] himself decide the matter. Yāj. II. 203 extends all the rules about gambling to *samāhvaya*. Bṛ. (S. B. E. 33 p. 386 verse 4) notes that the stake is to be paid by the owner of the animal that is defeated.[1004] The S. V. (p. 487) quotes a text of Viṣṇu and a (Bhāruci's ?) gloss

1001. अनभिज्ञो जितो मोच्योऽमोच्योऽभिज्ञो जितो रहः। सर्वस्वेऽपि जितेऽभिज्ञे न सर्वस्वं प्रदापयेत् । कात्या. ; रहो जितोऽनभिज्ञश्च कूटाक्षैः कपटेन वा । मोच्योऽभिज्ञोपि सर्वस्वं जितं सर्वं न दाप्यते ॥ बृह.; both q. by अपरार्क p. 804 and वि. र. p. 616. दीपकलिका on या. II. 200 cites रहो जितो etc.

1002. विग्रहेऽथ जये लाभे करणे कूटदेविनाम् । प्रमाणं सभिकस्तत्र शुचिश्च सभिको यदि ॥ कात्या. 942 q. by अपरार्क p. 804, वि. र. p. 617.

1003. उभयोरपि सन्दिग्धौ कितवाः स्युः परीक्षकाः । यदा विद्वेषिणस्ते तु तदा राजा विचारयेत् ॥ बृह. q. by अपरार्क p. 804, परा. मा. III. p. 576, वि. र. p. 618.

1004. द्वन्द्वयुद्धेन यः कश्चिदवसादमवाप्नुयात् । तत्स्वामिना पणो देयः यस्तत्र परिकल्पितः ॥ बृह. q. by वि. र. p. 614, स. वि. p. 486.

thereon that the king gets one-fourth of the stake from each of the owners of the fighting animals and that the animal that is defeated (except a wrestler or a buffalo) is to be made over, whether living or dead, to the owner of the winner. The Mānasollāsa (vol. III. p. 229) contains an elaborate description of a king's amusements by way of wrestling matches, cock-fights &c. The Daśakumāracarita makes frequent reference to gambling. In Ucchvāsa II. (p. 47) we are told that there are 25 kalās on which gambling depends, that legal proceedings between gamblers were decided by reliance on the sabhika and that out of a stake of 16000 *dīnāras*, the successful gambler took half and distributed the other half among the *sabhika* and the denizens of the gambling hall.

Gambling is one of the most ancient vices. Ṛg. X. 34 is a hymn which contains the lament of a gambler. Elsewhere also in the Ṛg. gambling is referred to. Vide Ṛg. I. 41. 9 (explained in Nirukta III. 16), VII. 86. 6 (where it is said that dice made of Vibhīdaka tree are one of the sources of sin), Ṛg. X. 42. 9, X. 43. 5. In the Atharvaveda also dice and *glaha* occur frequently. Vide Atharva IV. 16. 5, IV. 38 (a hymn for good luck in gambling). In Vāj. S. 30. 18 we have the words 'akṣarājāya kitavam'. In certain solemn sacrifices like the Rājasūya dice play was an important item. Vide H. of Dh. vol. II. p. 1219. Pāṇini teaches the formation of many words relating to gambling. In II.[1005] 1. 10 he teaches the formation of *Avyayībhāva* compounds like 'akṣapari' or 'śalākāpari' in the sense 'that loss was caused by one dice being cast in a way different from the way in which it was cast in a prior game'. In IV. 4. 2 he teaches that 'ākṣika' means one who uses dice in gambling or wins by using[1006] dice and in IV. 4. 19 he states that 'ākṣadyūtika'[1007] means '(enmity) brought about by using dice in gambling'. Vide also Pāṇ. II. 3. 57–58. Āp. Dh. S. II.[1008] 10. 25. 12–13 prescribe that in the

1005. अक्षशलाकासंख्याः परिणा । पाणिनि II. 1. 10, on which the महाभाष्य quotes a कारिका 'अक्षादयस्तृतीयान्ताः पूर्वोक्तस्य यथा न तत् । कितवव्यवहारे च एकत्वेऽक्ष-शलाकयोः ॥'

1006. तेन दीव्यति खनति जयति जितम् । पाणिनि IV. 4. 2; अक्षैर्दीव्यति जयति वा आक्षिकः ।

1007. निर्वृत्तेऽक्षद्यूतादिभ्यः । पाणिनि IV. 4. 19; अक्षद्यूतेन निर्वृत्तमाक्षद्यूतिकं वैरम् ।

1008. सभाया मध्येऽधिदेवनमुद्धत्यावोक्ष्याक्षान्निवपेद्युग्मान्वैभीतकान् यथार्थान् । आर्याः शुचयः सत्यशीला दीवितारः स्युः । आप. ध. सू. II. 10. 25. 12–13.

midst of the sabhā (hall) having raised a table for playing dice one should place thereon dice even in number and made from the vibhītaka wood and that players should be men of the three higher castes, pure and devoted to truth. In the Mahābhārata Yudhiṣṭhira[1009] is made to say that it was his vow not to refuse dice play when he was challenged to it. It was well-known that gambling affects the minds even of the good, while in the case of those who were not ordinarily good it led to dissensions and calamities. Many modern people justify the action of Yudhiṣṭhira on the ground that the code of kṣatriya chivalry and morality of those ancient days required that he should not be afraid to play with dice when challenged by an adversary. Conceding for the sake of argument that indulgence in gambling even on the part of such a virtuous, noble and philosophic warrior as Yudhiṣṭhira was justified or at least excusable, there is nothing to show that the code of kṣatriya chivalry permitted him to gamble away his own spirited, devoted and virtuous queen and his four valiant brothers. It appears that the real aim of the great author of the Mahābhārata is to emphasize that gambling is such a reprehensible pastime and so ruinous and degrading that even the greatest and the best, when once they indulge in it, lose all sense of duty, morality and of the claims of love and affection. It has already been seen how gambling was looked upon as a great vice in the king by writers on politics and also on dharmaśāstra. Even the Purāṇas here and there condemn gambling. For example, the Brahmapurāṇa (171. 29–38) condemns it in strong language. It says that the gambler's wife is always in distress and the gambler on seeing the condition of his wife is also worried (this is in almost the same words as Ṛg. X. 34. 10–11), that the Veda condemns gambling and that there is no sin comparable to gambling.

1009. आहूतोऽहं न निवर्ते कदाचिदिति शाश्वतं वै व्रतं मे ॥ सभापर्व 58. 16; अक्षद्यूतं महाप्राज्ञ सतां मतिविनाशनम् । असतां तत्र जायन्ते भेदाश्च व्यसनानि च ॥ उद्योग 128. 6.

CHAPTER XXVII

DĀYABHĀGA

(Partition of wealth)

The word *dāya* has been used even in the oldest period of the Vedic Literature. Ṛg. II. 32. 4 (*dadātu vīram śatadāyam-ukthyam*) has already been quoted above (on p. 388). In Ṛg. X. 114. 10 (*śramasya dāyam vibhajantyebhyaḥ*) the meaning of the word seems to be 'a share' or 'reward'. In the Tai. S. and the Brāhmaṇas the word dāya appears to be employed in the sense of 'paternal wealth' or simply 'wealth'. In the story of Nābhānediṣṭha[1010] it is stated that Manu divided his *dāya* among (for) his sons' (Tai. S. III 1. 9. 4). That 'dāya' here stands for 'dhana' follows from another passage of the Tai. S. (II. 5. 2. 7) 'Therefore they distinguish (or establish) the eldest son by wealth'. In the Tāṇḍya Brāhmaṇa[1011] 16. 4. 3–5 also it is said 'Therefore whoever among (a man's) sons secures the best or major portion of wealth as *dāya*, him they regard as the son who would be the lord of all'. Another word viz. *riktha* occurring in the sūtra and smṛti literature is also employed in the Ṛgveda[1012] III. 31. 2 'the son of the body does not give to his sister the ancestral wealth, but makes her the receptacle for the son of her husband'. The word *dāyāda* (meaning a co-sharer, one who takes a share) occurs frequently in the Vedic Literature. In the Tai. S. VI. 5. 8. 2[1013] it is said 'Therefore women being destitute of strength take no portion (of Soma)

1010. मनुः पुत्रेभ्यो दायं व्यभजत् । तै. सं. III. 1. 9. 4; तस्माज्ज्येष्ठं पुत्रं धनेन निरवसाययन्ति । तै. सं. II. 5. 2. 7. आप. ध. सू. (II. 6. 14. 11–12) quotes both these texts when combating the view that the eldest son gets the entire ancestral wealth. For the story of Nābhānediṣṭha with slight variation, vide Ait. Br. 22. 9, which is an attempt to explain the obscure hymns Ṛg. X. 61–62.

1011. तस्माद्यः पुत्राणां दायं धनतममिवोपैति तं मन्यन्ते यमेवेदं भविष्यतीति । ताण्ड्य 16. 4. 3–4.

1012. न जामये तान्वो रिक्थमारैक् चकार गर्भं सनितुर्निधानम् । ऋ. III. 31. 2. This is explained in the Nir. (III. 6) as 'न जामये भगिन्यै ... तान्वः आत्मजः पुत्रः रिक्थं प्रारिचत् प्रादात् । चकार एनां गर्भनिधानीं सनितुर्हस्तग्राहस्य'.

1013. तस्मात्स्त्रियो निरिन्द्रिया अदायादीरपि पापात्पुंस उपस्तितरं वदन्ति । तै. सं. VI. 5. 8. 2. दायाद is derived as दायमादत्ते (from दा with आ).

and speak more weakly than even a wretched (low) man'. In the Atharvaveda V. 18. 6 Soma is said[1014] to be the *dāyāda* of the brāhmaṇas. Viśvāmitra invites Sunaḥśepa to share in the spiritual wealth (dāya) belonging to him (Ait. Br. 33. 5), calls upon his sons to follow him and states that he (Śunaḥśepa) would accept them, his wealth (dāya) and his learning[1015]. The Nir. III. 4 quotes or summarizes other Vedic passages in which the words dāya and dāyāda occur. In Pāṇini II. 3. 39 and VI. 2. 5 the word dāyāda occurs.

The principal heads discussed under the *vyavahārapada* called *dāyabhāga* are two, viz. partition and inheritance. For at least a thousand years there have been two schools that widely differ on these two heads ; they are respectively known as the school of the Mitākṣarā and that of the Dāyabhāga on account of the pre-eminent position of these works in the respective schools. The latter school is predominant in Bengal while the former prevails in the whole of India excepting Bengal. But even in Bengal there are in modern times families governed by the law of the Mitākṣarā. This work in intention and scope does not profess to be a treatise on modern Hindu Law. It concerns itself with pointing out what the law of the Smṛtis and writers of medieval digests was and has to eschew an exhaustive discussion of the modern case-law and legislative enactments that have made the Hindu Law appear in many respects to be entirely different from the law of the commentaries and digests. Generally speaking, only very important divergences made by legislation and case law in the ancient and medieval Hindu Law can and may be pointed out here.

The principal Sanskrit works of the Dāyabhāga school are three viz. the Dāyabhāga of Jīmūtavāhana, the Dāyatattva of Raghunandana and the Dāyakramasaṅgraha of Śrīkṛṣṇa Tarkālaṅkāra. The Mitākṣarā school is subdivided into four sub-schools in which besides the Mitākṣarā, the supreme authority, other works are referred to as supplementary to it and as modifying some of its doctrines viz. the Benares school (which regards the Vīramitrodaya as of high authority), the

1014. न ब्राह्मणो हिंसितव्योऽग्निः प्रियतनोरिव । सोमो ह्यस्य दायाद इन्द्रो अस्याभिशस्तिपाः । अथर्व V. 18. 6.

1015. उपेया देवं मे दायं तेन वै त्वोपमन्त्रय इति । ऐ. ब्रा. 33. 5 ; एष वः कुशिका वीरो देवरातस्तमन्वित । युष्मांश्च दायं म उपेता विद्यां यामु च विद्मसि । ऐ. ब्रा. 33. 6.

Mithilā school (which relies on the Vivādaratnākara, the Vivādacandra and the Vivādacintāmaṇi), the Mahārāṣṭra or Bombay school (where the Vyavahāramayūkha is of the highest authority in Gujerat, Bombay Island and Northern Konkan even superseding the Mitākṣarā in some matters and the Vīramitrodaya and the Nirṇayasindhu are also relied upon), the Draviḍa or Madras school (where the Smṛticandrikā, the Vyavahāranirṇaya of Varadarāja, the Parāśara-mādhavīya and the Sarasvatīvilāsa are also works of authority). In spite of some differences in the rules accepted in different provinces in all of which the Mitākṣarā is of high authority, all the provinces except Bengal are held to be governed by one school. Vide *Ambabai* v. *Keshav* I. L. R. (1941) Bom. 250.

The words *dāya* and *vibhāga* have been variously defined in the digests. Nār. (*dāyabhāga*, verse 1) defines the vyavahārapada dāyabhāga as one in which sons arrange for the partition of their father's wealth. The Madanaratna as noted by the V. Mayūkha (text p. 94) reads 'arthasya pitryādeḥ' (wealth of the father and others) for 'pitryasya' in Nārada's verse. The Smṛtisaṅgraha quoted in the Sm. C. and other works states that the word dāya applies to wealth that comes to a man through the father or the mother and the Nighaṇṭu defines dāya as the paternal wealth that is to be divided.[1016] The Dāyabhāga, the Mit. and others explain that the words 'pitryasya' (father's) and 'putraiḥ' (by the sons) in Nār. are only illustrative, the real meaning being that the word 'dāyabhāga' applies wherever the wealth of a relative (father, grand-father &c.) is distributed among his relatives (sons, grandsons &c.) simply on account of their relation to the deceased[1017] owner. This is borne out by the fact that Manu and Nārada both speak of the distribution of the mother's wealth also under dāyabhāga. The Mit. while introducing Yāj. II. 114 says that the word *dāya* means the wealth which becomes another's property simply by reason of the fact of his relation to the owner. The V. Mayūkha (p. 93) defines dāya as that wealth which is to be divided and which is not the wealth of re-united members.

1016. विभक्तव्यं पितुर्द्रव्यं दायमाहुर्मनीषिणः । निघण्टु q. by स्मृतिच. II. p. 255, व्य. म. p. 93; पितृद्वारागतं द्रव्यं मातृद्वारागतं च यत्। कथितं दायशब्देन तद्विभागोऽधुनोच्यते ॥ स्मृतिसंग्रह q. by स्मृतिच. II. p. 255, व्य. म. p. 93.

1017. पित्र्यस्येति पुत्रैरिति च द्वयमपि सम्बन्धिमात्रोपलक्षणं सम्बन्धिमात्रेण सम्बन्धिमात्रधनविभागेपि दायभागपदप्रयोगात् । दायभाग I. 3; तत्र दायशब्देन यद्धनं स्वामिसम्बन्धादेव निमित्तादन्यस्य स्वं भवति तदुच्यते मिता.; असंसृष्ट विभजनीयं धनं दायः। व्य. म. p. 93.

The word 'dāya' though derived from the root 'dā' (to give) does not apply to 'heritable wealth' in the literal sense (of gift).[1018] The word dāya is rather conventionally used, though derived from the root 'dā'. In a gift (as stated in H. of Dh. vol. II. p. 841) there are two chief ingredients viz. 'abandoning one's ownership over a thing' and 'bringing about the ownership of another in that thing'. But in the case of dāya the deceased does not of his own accord abandon his ownership with the idea of creating ownership in another. The two (dāna and dāya) are analogous in this that in both there is cessation of the ownership of a man in a thing.

The Mit., the Par. M., the Madanaratna, the V. Mayūkha, the V. P. and other works that follow the doctrines of the Mit. divide dāya into two varieties viz. *apratibandha* (unobstructible)[1019] and '*sapratibandha*' (obstructible). The first occurs in the case of sons, grandsons and great-grandsons, who, by the very fact of their being the sons or grandsons, obtain ownership in the (ancestral) wealth held by the father or the grandfather. In this case the existence of the father or grandfather presents no obstacle (*pratibandha*) to the son's or grandson's taking an interest by the very fact of his birth in the family property that is in the hands of the father or grandfather. Therefore this is called *apratibandha dāya*. But when a man takes the wealth of his paternal uncle or a father succeeds to the wealth of his son because the uncle or the son dies issueless, it is *sapratibandha dāya*, as in these cases the nephew or the father has no right in the uncle's or son's property as long as the uncle or the son is alive or as long as the uncle or son has a son or grandson. That is, the life of the owner or the existence of a son presents an obstacle to the nephew's or father's succession. Hence it is *sapratibandha dāya*.

It is to be noted that the Dāyabhāga, the Dāyatattva and a few other works do not divide dāya into two kinds. According

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1018. दीयते इति व्युत्पत्त्या दायशब्दो ददातिप्रयोगश्च गौणः, मृतप्रव्रजितादिस्वत्वनिवृत्तिपूर्वकपरस्वत्वोत्पत्तिफलसाम्यात् । न तु मृतादीनां तत्र त्यागोस्ति । ततश्च पूर्वस्वामिसम्बन्धाधीनं तत्स्वाम्योपरमे यत्र द्रव्ये स्वत्वं तत्र निरूढो दायशब्दः । दायभाग I. 4-5. Vide दायतत्त्व pp. 161, 163 for almost identical words. The व्य. प्र. (pp. 411-12) quotes these words and criticizes them.

1019. अयं च दायो द्विविधः सप्रतिबन्धोऽप्रतिबन्धश्चेति । यद् द्रव्यं स्वामिनस्तत्पुत्रादेरप्यभावे स्वं भवति स सप्रतिबन्धो दायः । यथा पित्रादीनां पुत्रादिधनम् । यत्पुत्रपौत्रयोः पितृपितामहधनं जन्मन आरभ्य स्वं भवति सोऽप्रतिबन्धो दायः । तत्र स्वामितत्पुत्रसद्भावस्याप्रतिबन्धकत्वात् । मदनरत्न (व्य. folio 89).

to them, all dāya is *sapratibandha* i. e. ownership arises in another only on the death of the previous owner[1020] or on the cessation of the latter's ownership owing to his becoming *patita* or a *sannyāsin* (ascetic).[1021] The doctrine of this school is called *uparamasvatvavāda* (ownership arising on death), while the school of the Mit. holds the view of *janmasvatvavāda*. This is the great difference between the school of the Dāyabhāga and that of the Mitākṣarā. The former does not recognise that the son, grandson or great-grandson acquires by birth any right of ownership in the ancestral property held by the father or other ancestor.

The two words '*sva*' and '*svāmin*' are correlative, the idea underlying both is the same and they are two aspects of the same question. 'Sva' means 'what belongs to a person' i. e. 'property'. It has direct reference to a thing and indirect reference to the owner of the thing. 'Svāmin' means 'master or owner' and directly refers to the person owning and indirectly to the thing. Vide Salmond's Jurisprudence, chap. XII. pp. 339-340 (9th ed. of 1937) for the idea of ownership. According to Śiromaṇibhaṭṭācārya *svatva* is a separate *padārtha* (category) by itself, while others say that it is a capacity.[1022]

1020. अतो जीवतोः पित्रोर्धने पुत्राणां स्वाम्यं नास्ति किं तूपरतयोरिति ज्ञापनार्थं मन्वादिवचनम् । एकः शब्दोऽपरश्चार्थः । न चोपरममात्रमेव विवक्षितं किंतु पतितप्रव्रजितत्वाद्युपलक्षयति स्वत्वविनाशहेतुतासाम्यात् । दायभाग I. 30-31, p. 18; the वि. ता. (folio 99) says 'ते (जीमूतवाहनादयः) सर्वत्र सप्रतिबन्धस्यैव दायस्य सत्त्वात् रिक्थसंविभागयोर्भेदाभावात् पूर्वोक्तयुक्तिविरोधान्मूर्खा एव'.

1021. It is to be noted that becoming *patita* entailed loss of the ownership of wealth, even according to Indian writers, only if the proper prāyaścittas were not performed. For example, the V. P. (p. 429) states 'पातित्ये त प्रायश्चित्तानाचरण एव स्वत्वनाशो विभागानर्हता च । अन्यथा द्रव्यसाध्यं प्रायश्चित्तमपि पित्रोः स्वद्रव्येण न स्यात् ।' Ancient and medieval Hindu jurists were very considerate if one compares their prescriptions with the harsh laws against Non-conformists and Roman Catholics prevalent only about a hundred years ago in England and Ireland as briefly disclosed in Pollard's work 'Conscience and Liberty' pp. 46-48. The Caste Disabilities Removal Act (XXI of 1850) provides that so much of any law or usage in force in British India, which inflicts on any person forfeiture of rights of property or may be held to impair or affect any right of inheritance by reason of his renouncing or having been excluded from the communion of any religion or being deprived of caste, shall cease to be enforced as law in British India. This act, therefore, did away with the effects of being *patita* without undergoing *prāyaścitta* or of being excommunicated by a caste for some grave lapse.

1022. स्वत्वं पदार्थान्तरमेवेति शिरोमणिभट्टाचार्याः । स्वमिति व्यवहारविषयत्वं शक्तिविशेषो वेत्यन्ये । तच्च स्वगम्यमिति केचित् । वि. ता. (ms.) folio 96.

Since in defining dāya the idea of *svatva* (ownership) was brought in, many of the digests enter upon a learned disquisition on the question whether *svatva* is to be understood from the *śāstra* alone or is a matter of popular understanding. There is also an ulterior purpose in the minds of some writers in this discussion, viz. that of denying that *svatva* can arise by mere birth. The reasoning of those who say that *svatva* is to be understood from śāstra alone is as follows: Gaut. (X. 39–42) lays[1022a] down five sources of ownership common to all viz. *riktha* (inheritance), purchase, partition, seizure, finding (of treasure and the like) and further states that in the case of brāhmaṇas acceptance of gifts is an additional source of ownership, conquest in the case of kṣatriyas, gain by agriculture and service in the cases of vaiśyas and śūdras respectively. If ownership were to be apprehended from means other than śāstras, then this text of Gautama laying down sources of ownership that are common to all varṇas and that are peculiar to each of the several varṇas would serve no useful purpose and would be superfluous. Further Manu (VIII. 340) states that if a brāhmaṇa seeks wealth even by teaching or officiating as a priest for a man whom he knows to be a thief, he would be punishable like a thief. If *svatva* is a matter of popular understanding then this is not proper, since the priest or teacher who obtains the wealth from one who is in possession of stolen things would have to be regarded as guilty of no offence as he merely pursues the methods of earning wealth specially prescribed for him by the smṛti texts. Further, if *svatva* is not to be apprehended from śāstra, such complaints as 'a thing that belongs to me has been stolen by this man' would not be possible, as svatva being a purely secular matter the thief would himself be (or would have to be deemed to be) the owner of the thing, because the latter is in possession of it. Thieving is forbidden by śāstra and so on the view of svatva being apprehended from śāstra alone, such a complaint is understandable[1023]. Besides eminent

1022a. स्वामी रिक्थक्रयसंविभागपरिग्रहाधिगमेषु । ब्राह्मणस्याधिकं लब्धं क्षत्रियस्य विजितं निर्विष्टं वैश्यशूद्रयोः । गौ. X. 39–42. The Mit. explains: तत्राप्रतिबन्धो दायो रिक्थम् । क्रयः प्रसिद्धः । संविभागः सप्रतिबन्धो दायः । परिग्रहोनन्यपूर्वस्य जलतृणकाष्ठादेः स्वीकारः । अधिगमो निध्यादेः प्राप्तिः ।

1023. वर्तते यस्य यद्धस्ते तस्य स्वामी स एव न । अन्यस्वमन्यहस्ते तु चौर्याद्यैः किं न दृश्यते । तस्माच्छास्त्रत एव स्यात्स्वाम्यं नानुभवादपि । अस्यापहृतमेतेन न युक्तं वक्तुमन्यथा । विहितोर्थागमः शास्त्रे यथावर्णं पृथक् पृथक् । ... न च स्वमुच्यते तद्वत् स्वेच्छया विनियुज्यते । विनियोगोत्र सर्वस्य शास्त्रेणैव नियम्यते । संग्रह q. by स्मृतिच. II. pp. 256–257, मदनरत्न (folio 89), व्य. म. p. 416. The last notes that 'तथावर्णं पृथक् पृथक्' is the reading of the मदनरत्न, but in my ms. of the मदनरत्न the reading is as in the स्मृतिच.

works and writers like the Smṛtisaṅgraha and Dhāreśvara[1024] support the view. Those who hold that svatva is known only from śāstra explain that riktha in Gautama's sūtra means simply dāya and saṁvibhāga means partition of dāya which establishes the separate ownership of a person on a portion of dāya (vide V. P. p. 415).[1025] They further urge that Gautama's text does not specifically mention birth as a source of ownership.

Others headed by the Mit. hold that *svatva* is apprehended from worldly usage and not from śāstra. Their reasoning is: (1) just as rice effects an ordinary worldly purpose, so svatva brings about worldly transactions such as sale. What is not owned by a man does not enable him to effect such worldly objects and transactions as sale or mortgage. Such matters as the Āhavanīya fire that are prescribed by the śāstras are not useful in effecting secular purposes, but only śāstric ones. The Āhavanīya fire may be used in cooking rice, but that is in virtue of its ordinary nature as fire and not in its śāstric nature of being the Āhavanīya fire.[1026] (2) Even among Mlecchas and lowest peoples who are quite innocent of the knowledge of śāstras, the ideas of ownership arising from transactions of sale and the like do exist. Further (3) learned men well-versed in

1024. एतत्संग्रहकारमतं धारेश्वरभट्टेनाप्याश्रितम् । मदनरत्न (folio 90); यदाश्रितं चैतद्धारेश्वरसूरिणा । स्मृतिच. II. p. 257. It is somewhat strange that Dhāreśvara who is no other than the celebrated king Bhoja of Dhārā should be styled *bhaṭṭa* by the Madanaratna and *ācārya* by the Mit. (on Yāj. III. 24) and the V. Mayūkha (p. 89).

1025. When a man dies his wealth is the dāya which several persons may inherit. In their case, it becomes their joint property. So their ownership, being joint, is denoted by the word 'riktha'. The joint owners become exclusive owners of definite parts of the dāya by partition; thus partition is a source of ownership (in this case exclusive ownership of distinct parts by several). But if there is a single heir then there can be no *saṁvibhāga* (partition) and so the source of his ownership is *riktha* and not saṃvibhāga. When there are several heirs riktha is on this view a source of joint ownership only. It must be said that on the hypothesis of Jīmūtavāhana, *riktha* and *saṁvibhāga* rather coalesce with one another and cannot be distinguished so well as on the theory of the Mit.

1026. *Vide* the Mit. (on Yāj. II. 114), V. P. pp. 419–422, V. Mayūkha pp. 89–90, Par. M. III. pp. 482–483 for elaboration of this view. The S. V. p. 396 ff while accepting the view that svatva is *laukika* does not accept the reasoning of the Mit., particularly with regard to the Āhavanīya fire.

the Mīmāṁsā such as Prabhākara[1027] (on Jaimini IV. 1. 2) and

1027. The Mit. (on Yāj. II. 114) quotes a passage of Prabhākara on the *lipsāsūtra* and explains it. Jaimini's sūtra (IV. 1. 2) is यस्मिन्प्रीतिः पुरुषस्य तस्य लिप्सार्थलक्षणाऽविभक्तत्वात्. In this sūtra the word *lipsā* occurs. Therefore this is called *lipsāsūtra*. The words अर्जनं स्वत्वं नापादयतीति विप्रतिषिद्धं occur in the Dāyabhāga also (II. 67 p. 49) and in Medhātithi on Manu VIII. 417. These words are quoted in the Mit. as taken from Prabhākara (called *Guru*) and so it follows that even Medhātithi quotes from Prabhākara. The earliest extant commentary of Śabara offers three explanations of this sūtra, which deals with the question of what is *kratvartha* and what is *puruṣārtha*. The third explanation concerns itself with the rules about acquiring wealth (which is necessary for performing every sacrifice) such as acceptance of gifts in the case of brāhmaṇas. The question is whether these rules about the means of acquiring wealth are kratvartha or puruṣārtha. If they are the former (i. e., if they are meant to be directly connected with the sacrifice) then a sacrifice performed with wealth not acquired according to the rules of śāstra will be defective or a nullity. But if the rules are puruṣārtha (i. e. addressed to the sacrificer only or to his conscience and sense of dharma) then even if the sacrifice is performed with wealth not acquired in accordance with śāstra there will be no defect in the sacrifice itself, only the acquirer will be at fault and may have to perform prāyaścitta. Says Śabara: एवं वा द्रव्यार्जनमुदाहरणम् । इह द्रव्यार्जनं तैस्तैर्नियमैः श्रूयते । ब्राह्मणस्य प्रतिग्रहादिना राजन्यस्य जयादिना वैश्यस्य कृष्यादिना । तत्र सन्देहः किं क्रत्वर्थो द्रव्यपरिग्रह उत पुरुषार्थ इति ।.

The Mit. points out that in the plausible view (pūrvapakṣa) and the established conclusion (siddhānta) it is assumed that acquisition of wealth by acceptance of gift is a matter known from worldly usage (*lokasiddha*). The comment of Prabhākara (called Guru) on this sūtra is not yet available in print. The Sm. C. II. pp. 257–258, the Madanaratna, and V. P. p. 420 quote a passage from the Nayaviveka of Bhavanātha on the same subject and explain it. The मदनरत्न says 'उक्तं चैतन्नयविवेके प्राभाकरमताम्बुजप्रभाकरेण भवनाथेन । लोकसिद्धं वा अर्जनं जन्मादि । अत एवानिदंप्रथमलोकधीविषयतया स्थिते निबन्धनार्था (=विषयतया व्यवस्थितनिबन्धनार्था ?) स्मृतिर्व्याकरणादिस्मृतिवत्.' The passage as printed in V. P. p. 420 (अत एवानिन्थं प्रथमलोकधीविषयव्यवस्थितं तन्निबन्धनार्था स्मृतिः) is corrupt and hardly makes any sense. The V. Mayūkha simply refers to Bhavanātha without quoting him. The वि. ता. (folio 98) remarks 'मीमांसकैरप्युक्तं प्रतिग्रहादिनियमानां पुरुषार्थत्वं तेन विना अर्जितद्रव्ये पुरुषस्यैव दोषः क्रतुसिद्धिर्भवत्येव ।.' Vide H. of Dh. vol. II. pp. 129–130 for quotations from several smṛtis laying down various means of livelihood. Manu X. 115 enumerates seven sources of wealth as sanctioned by śāstra viz. finding (of treasure), *dāya* (inheritance), purchase, conquest, lending for interest, work (agriculture and trade), acceptance of a gift from a worthy person and in X. 116 mentions ten means of maintaining oneself (in distress). The Mahābhāṣya (vol. I. p. 483) on Pāṇ. II. 3. 50 states that a thing becomes one's own in four ways viz. by purchase, by seizure, by begging or by exchange 'यदेतत्स्वं नाम चतुर्भिरेतत्प्रकारैर्भवति क्रयणादपहरणाद्याच्ञाया विनिमयादिति.' It must be remembered that the enumeration of the means of acquiring property in the dharmaśāstra works is not exhaustive but only illustrative.

Bhavanātha, author of the Nayaviveka, hold that ownership which springs from certain fixed sources only (such as purchase) is a matter of worldly usage or experience. Bhavanātha says: the sources of acquisition such as birth and purchase &c. are known from the world. The conception about the sources of ownership was not started for the first time by the śāstra, but such sources have been known from times immemorial (long before the smṛtis). That is, the recognition of the sources of ownership is prior and śāstra only systematises them subsequently. Therefore the smṛti of Gautama (X. 39) only assigns their proper spheres to the several sources of ownership that are already well-known (viz. five are common to all, acceptance of gifts is peculiar to brāhmaṇas and so on). In this respect it is like the grammar of Pāṇini. Pāṇini does not create or lay down new words but he takes the words already current in the language and introduces a system about their formation. Similarly Gautama only voices a certain fixed system among the several sources of ownership. The Mit. and its followers say that Gautama simply repeats the several sources of ownership known in ordinary worldly life (as the V. Mayūkha says 'lokasiddha-kāraṇānuvādakam)'. The Mit., Par. M. III. p. 481, S. V. p. 402 and others hold that riktha and saṁvibhāga in Gautama's sūtra stand for apratibandha dāya and sapratibandha dāya respectively.[1028] The Mit. meets the other arguments of its opponents by replying that in the first place that even ordinary popular usage does not recognise that the thief becomes the rightful owner by simply possessing the thing stolen and that in the case where a person says 'this man has stolen my property' there is doubt and dispute whether the man charged has got ownership by purchase or the like.

The purpose of this discussion of the topic whether ownership is only known from śāstra or is a secular matter is, according to the Mit., as follows:—Manu XI. 193 (= Viṣṇu Dh. S. 54. 28) states that when brāhmaṇas acquire wealth by reprehensible actions (such as accepting a gift from an unworthy person or engaging in the sale of articles which he should not sell)

1028. The word *riktha* is often used in the sense of sapratibandha dāya also as in Gaut. XII. 37 (rikthabhāja ṛṇam pratikuryuḥ) and Yāj. II. 51 (rikthagrāha ṛṇam dāpyaḥ), Baud. (riktham mṛtāyāḥ kanyāyāḥ) q. by the Mit. on Yāj. II. 146. Vide *Bai Parson v. Bai Somli* 36 Bom. 424 at pp. 428-434 for an exhaustive exposition of the basic principles underlying the two kinds of dāya in the Mit. and the Vyavahāra-mayūkha).

they are purified from the sin by abandoning that wealth, by repeating the sacred texts (like the Gāyatrī) and by austerities. If ownership springs from śāstra alone, what is earned by a person in ways condemned by śāstra cannot become the property of that man and so his sons cannot divide what is not his property. But if ownership is deemed to be a secular matter (*laukika*) then even what is obtained by condemned means becomes the property of that man, his sons incur no blame (though the acquirer may have to perform penance) and can divide that wealth (which is dāya), since Manu X. 115 enumerates dāya among the seven approved sources of wealth. The Madanaratna does not approve of this. Its reason briefly is that Manu XI. 193 simply lays down a penance, but does not say that wealth so obtained does not become the acquirer's property, that it is on account of this that Manu does not prescribe any special fine or punishment for one who acquires wealth by means of a bad gift, as he prescribes for a thief and that what is acquired by theft does not become the property of the thief and his sons cannot divide it and would incur punishment if they do so. V. P. (pp. 423-424) refers to the views of the Mit. and the Madanaratna and approves of the views of the former.

This discussion leads on to the next question, viz. whether ownership arises from partition or whether partition takes place of what already belongs to oneself (by birth). This subject has exercised the minds of writers on Dharmaśāstra from very ancient times. It should be noted that the difference of opinion relates only to the case of sons, grandsons and great-grandsons. All writers are agreed that persons other than these have no rights by birth in the wealth of their relatives. Those who oppose the view that sons acquire right by birth argue as follows:—

If sons have ownership by birth in ancestral property, then, on the birth of a son, the father cannot enter upon such religious duties as consecrating Vedic fires (which entail the expenditure of ancestral wealth) without the consent of the son. This would be opposed to the Vedic injunction "a man, whose hair is yet dark and who has had a son, should consecrate the sacred Vedic fires". Further, Smṛti passages stating that a gift made by the father to one out of several sons as a favour (Nār. dāyabhāga 6) or by the husband to his wife out of affection is not liable to partition would be meaningless, since such gifts cannot be made without the consent of the sons (on the

theory that sons acquire property by birth). Besides, there are smṛti texts like those of Devala[1029] which expressly negative the son's ownership during the father's lifetime. Manu IX. 104 and Nār. (dāyabhāga 2) enjoining that sons should divide wealth after the father goes to heaven (because the sons are not masters when the parents are alive, as Manu says) indicate that sons have no ownership by birth. Moreover *svatva* is apprehended only from śāstras (like Gautama), which do not expressly enumerate birth as a source of ownership along with purchase and the like. Therefore the ownership of the son or sons arises on the cessation of the ownership of the previous owner (by his death or by his becoming *patita* or becoming an ascetic). When there is a single son, he inherits on the death of the father and there is no necessity of a partition. But when there are several sons, they jointly inherit paternal wealth and can become exclusive owners of separate parts of the paternal wealth by partition alone. As this last is the most usual case, it is said that *svatva* arises from partition (*vibhāgāt svatvam*). If this doctrine that ownership arises by partition alone were literally interpreted, then an only son inheriting his father's property will have no ownership as urged by the Vyavahāra-nirṇaya, since there can be no partition in his case[1030].

The arguments advanced by those who hold that ownership in ancestral wealth arises by birth are as follows:—

It has been established that ownership is a matter of ordinary worldly usage. It cannot be denied that it is quite well-known to all ordinary people that sons acquire ownership by birth. Besides there is the text of Gautama[1031] "the ācāryas hold that one acquires ownership by birth itself". Moreover there are numerous smṛti passages like those of Yāj. II. 121,

1029. पितर्युपरते पुत्रा विभजेयुर्धनं पितुः । अस्वाम्यं हि भवेदेषां निर्दोषे पितरि स्थिते ॥ देवल q. by दायभाग I. 18, p. 13, दीपकलिका (on या. II. 114), वि. र. p 456, परा. मा. III. p. 480.

1030. तथा विभागात्स्वत्वपक्षे एकपुत्रस्य मातापित्रोरूर्ध्वं विभागाभावात् स्वत्वं न स्यात् तेन कुलप्रवेशादेव पितृपैतामहद्रव्येपि पुत्रस्य स्वाम्यमस्त्येव । व्यव. नि p. 412.

1031. तथा 'उत्पत्त्यैवार्थस्वामित्वं लभेतेत्याचार्याः' इति गौतमवचनाच्च । मिता. on या. II. 114. This is variously read by the digests and commentaries. The Madanaratna, Sm. C. II. p. 258 and Dāyatattva p. 162 read उत्पत्त्यैवार्थं स्वामित्वाल्लभेतेत्याचार्याः. The व्य. म. p. 89. reads ०लभन्त इत्याचार्याः, while स. वि. reads 'उत्पत्त्यैवार्थे स्वामित्वं लभत इत्याचार्याः' (p. 402). Both Sm. C. and S. V. explain 'उत्पत्त्यैव मातृगर्भे शरीरोत्पत्त्यैवेत्यर्थः', while the सुबोधिनी and the बालम्भट्टी on the मिताक्षरा explain उत्पत्त्यैव as जन्मनैव.

Bṛ. (S. B. E. 33 p. 370 verse 3), Kāt. (839), Vyāsa and Viṣṇu Dh.[1032] S. XVII. 2 which expressly state that in the paternal grandfather's wealth, the father and the son have equal ownership (and so the right of the son must be by birth). Those who uphold the son's ownership by birth repel the arguments advanced in favour of the opposite theory as follows:—The Vedic text enjoining consecration of Vedic fires at a certain age indicates that the father has the power to spend for religious rites from ancestral wealth even after the birth of a son. Similarly as head of the family and its manager, the father has independent authority to spend ancestral wealth (except immovable property) for indispensable acts of religious duty expressly enjoined by Vedic and Smṛti texts and for making gifts of affection, for maintenance of the family and for ridding the family of distress. Further the father or the manager of the family can dispose of even immovable property by mortgage or sale in a season of distress or for the benefit of the family and for necessary religious purposes (such as śrāddhas[1033] etc.)

Ownership has to be distinguished from possession and custody. Further ownership is of various kinds, such as corporeal and incorporeal, sole ownership and joint ownership, ownership as trustee and beneficial ownership, vested and contingent. Even Western writers on Jurisprudence like Austin, Pollock and Salmond, find it difficult to define the exact meaning of ownership. Austin (Lecture XLVII) defines

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1032. द्रव्ये पितामहोपात्ते स्थावरे जङ्गमे तथा । सममंशित्वमाख्यातं पितुः पुत्रस्य चैव हि ॥ बृह. q. by दायभाग II. 50 p. 46, अपरार्क p. 728, व्यव. नि. p. 410, दीपकलिका, स. वि. p. 374, वि. र. p. 461, व्य. म. p. 98. This is ascribed to व्यास by स्मृतिच. II. p. 279. पैतामहं समानं स्यात् पितुः पुत्रस्य चोभयोः । स्वयं चोपार्जितं पित्रा न पुत्रः स्वाम्यमर्हति ॥ कात्या. q. by अपरार्क p. 725, व्यव. नि. p. 410, स्मृतिच. II. p. 279; क्रमागते गृहक्षेत्रे पितृपुत्राः समांशिनः । पैतृके न विभागार्हाः सुताः पितुरनिच्छतः ॥ व्यास q. by अपरार्क p. 728, व्यव. नि. p. 410, स. वि. p. 475 (reads पुत्रपौत्राः समांशिनः), वि. र. p. 461; पैतामहे त्वर्थे पितृपुत्रयोः तुल्यं स्वामित्वम् । विष्णुधर्मसूत्र 17. 2.

1033. तस्मात् पैतृके पैतामहे च द्रव्ये जन्मनैव स्वत्वम्, तथापि पितुरावश्यकेषु धर्मकृत्येषु वाचनिकेषु प्रसाददानकुटुम्बभरणापद्विमोक्षादिषु च स्थावरव्यतिरिक्तद्रव्यविनियोगे स्वातन्त्र्यमिति स्थितम् । स्थावरे तु स्वार्जिते पित्रादिप्राप्ते च पुत्रादिपारतन्त्र्यमेव । ... अस्यापवादः । एकोपि स्थावरे कुर्याद्दानाधमनविक्रयम् । आपत्काले कुटुम्बार्थे धर्मार्थे च विशेषतः ॥ इति । मिता. on या. II. 114. This is the basic passage of the Mit. on which innumerable decisions have been given in the law reports, one of the latest and most authoritative being *Brij Narain v. Mangla Prasad* L. R. 51 I. A. 129 quoted on p. 448 above.

property or dominion as the right to use or deal with some given subject in a manner or to an extent, which though not unlimited, is indefinite. Pollock defines ownership as the entirety of the powers of use and disposal allowed by law. But the idea of ownership does not require, according to Sanskrit works on Dharmaśāstra, that the owner should always be able to do with his property as he pleases. On the contrary the śāstras lay down restrictions on the owner, enjoining upon him not to make gifts to the detriment of his family (vide Yāj. II. 175 "*svam kuṭumbāvirodhena deyam*" and the verse of the Smṛti-saṅgraha "*na ca svamucyate*" quoted in note 963 above). Therefore property does not comprise only what one can dispose of at one's sweet will, but what is capable (in appropriate circumstances only) of being disposed of as one[1034] likes. A person may be prevented from dealing with his property as he likes by the king or by the rules of śāstra, by public opinion, by his own inclinations and by the pressure of those around him. But what he owns is theoretically capable of being disposed off by him as he likes. The Madanaratna puts forth the illustration that seeds kept dry in a granary do not sprout, yet they have the capacity of sprouting and so are as well denominated seeds as others that sprout. There are various grades of the limitations on property, such as the father's power, the widow's power and so on. What a person earns should belong to him, should be his property. But there are passages like Manu VIII. 416 and Nār. (abhyupetyāśuśrūṣā, verse 41) that state[1035] "three are declared to be without wealth viz. the wife, the son and the slave; whatever they earn is for him to whom they (wife, son and slave) belong". It has been stated

1034. न च यथेष्टविनियोज्यत्वं स्वत्वमिति वयं ब्रूमः किं तर्हि यथेष्टविनियोगयोग्यत्वम्। तच्च शास्त्रे कुटुम्बभरणादिविनियोगनियमनेन विनियोगान्तरविषयतामलभमानस्याप्यर्जितत्वप्रयुक्तमस्त्येव। यथा कुतश्चिद्धेतोरङ्कुरोत्पादनमकुर्वतोपि कुशूलावस्थितस्य बीजस्य बीजत्वप्रयुक्तमङ्कुरोत्पादनयोग्यत्वम्। उक्तं च नयविवेके। तच्च तस्य तदर्हं येनार्जितमिति। तदर्हं यथेष्टविनियोगार्हम्। भट्टमतानुसारिणि तन्त्ररत्नेपि। यथेष्टविनियोज्यत्वं हि स्वत्वं केवलक्रत्वर्थत्वेऽन्यत्राविनियोगाद्यथेष्टविनियोज्यत्वाभाव (विनियोज्यत्वाभावात्स्वत्वाभाव ?) इति। विनियोज्यमत्र विनियोगार्हं 'अर्हे कृत्यतृचश्चेति' पाणिनिस्मरणात्। मदनरत्न. 'अर्हे कृत्यतृचश्च' is पाणिनि III. 3. 169. The passage यथेष्टविनि ... त्वाभाव इति occurs in the तन्त्ररत्न (सरस्वतीभवन series) part 1 p. 19. Vide व्य. प्र. p. 416 for a similar statement and p. 422 for the illustration of seed in the granary.

1035. भार्या पुत्रश्च दासश्च त्रय एवाधनाः स्मृताः। यत्ते समधिगच्छन्ति यस्य ते तस्य तद्धनम्॥ मनु VIII. 416; उद्योगपर्व 33. 64 reads त्रय एवाधना राजन् भार्या दासस्तथा सुतः। यत्ते &c.; नारद (अभ्यु. 41) is अधनास्त्रय एवोक्ता भार्या दासस्तथा सुतः। यत्ते &c.

by such an ancient writer as Śabara-svāmin[1036] that this passage does not deny the ownership of the wife or son in what she or he earns, but is only intended to lay down that the wife or son cannot independently (without the consent of the husband or father) dispose of what she or he earns. This view of the text of Manu is accepted by the Dāyabhāga as well as by the Mitākṣarā School. The latter holds on the analogy of the interpretation of Manu VIII. 416 that the texts of Devala, Nār. and Manu IX. 104 which apparently deny ownership (*svāmya*)[1037] to the son during the father's lifetime over property in the hands of the father are to be interpreted only as denying the son's power of independent dealing with such property during the father's lifetime or as referring to the self-acquisitions of the father. On the other hand the Dāyabhāga and the Dāyatattva try to explain away such passages as those of Yāj. II. 121, Viṣṇu and others (quoted above) that speak of the son's ownership by birth. The Dāyabhāga offers two explanations of Yāj. II. 121.[1038] The first explanation offered by it and taken from Udyota is :— If A has two sons B and C of whom C dies first, leaving a son D and then A dies, then Yāj. says that both B (son of A) and D (grandson of A) will be equally entitled to the wealth left by A and not B alone, though he is nearer to A than D, because both B and D offer piṇḍas of the same efficacy to A in the pārvaṇa-śrāddha and so there should be no difference between the two. The words " sadṛśam svāmyam " refer to this equality of the son and grandson. The 2nd explanation is that of

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1036 On जै. VI. 1. 12 शबर says ' एवं स्मरति । भार्या दासश्च पुत्रश्च निर्धनाः सर्व एव ते । यत्ते ... तद्धनमिति । '. Then on जै. VI. 1. 14 he remarks ' यत्तूच्यते भार्यादयो निर्धना इति । स्मर्यमाणमपि निर्धनत्वमन्याय्यमेव श्रुतिविरोधात् । तस्मादस्वातन्त्र्यमनेन प्रकारेणोच्यते संव्यवहारप्रसिद्ध्यर्थम् । '.

1037. यत्तु देवलोपि पितर्युपरते ... स्थिते इति अत्रास्वाम्यवचनमस्वातन्त्र्यप्रतिपादनार्थमिति मन्तव्यम् । स्मृतिच. II. 256; vide also अपरार्क p 718, व्यव. नि. p. 412, परा. मा. III. p. 480 for similar remarks. ' देवलः पितर्युपरते ... इति तत्पित्रर्जिते स्वातन्त्र्यनिषेधार्थं न पैतामहे ' वि. ता. folio 96.

1038. यत्तु याज्ञवल्क्यवचनं ' भूर्या पितामहोपात्ता ... चोभयोः ' इति तस्य निरवद्यविद्योद्योतेन द्योतितस्तत्त्वतोऽयमर्थः । यत्र द्वयोर्भ्रात्रोर्जीवत्पितृकयोरप्राप्तभागयोरेकः पुत्रमुत्पाद्य विनष्टोऽन्यो जीवति अनन्तरं पिता मृतः तत्र पुत्र एव तद्धनं प्राप्नोतु अतिसंनिकर्षात् तदर्थं सदृशं स्वाम्यमिति वचनम् । यथा पैतामहधने पितुः स्वाम्यं तथैव तस्मिन्मृते तत्पुत्राणामपि न तत्र संनिकर्षविप्रकर्षाभ्यां कोपि विशेषः पार्वणविधिना पिण्डदानेन द्वयोरपि समुपकारकत्वाविशेषादित्यभिप्रायः । दायभाग II. 9, p. 29. Here the Dāyabhāga appears to refer to a very learned predecessor called Udyota, who is styled निरवद्यविद्य (of unblemished learning). From the व्यवहारनिर्णय (pp. 78, 455) it appears that उद्योतन was an ancient author on vyavahāra spoken of in the same breath with धारेश्वर and असहाय.

Dhāreśvara viz. that when the father desires to make a partition, he may distribute his self-acquired property as he likes among his sons, but as to the property he got from his own father (i. e. the grandfather of his sons) he has the same ownership that sons have and he cannot make an unequal division at his sweet will. The Dāyabhāga[1039] rejects the view that Yāj. II. 121 enables the son to demand partition of the grand-father's property from the father even against the will of the latter or that father and son have equal shares in the grandfather's property. The same remarks apply to the texts of Viṣṇu and others viz. that in the grandfather's property father and son are equally owners and that the words "tulyam svāmyam" or "samamaṁśitvam" do not mean that father and son take the same share therein.

From the above discussion it will be clear that the two schools of the Dāyabhāga and of the Mitākṣarā were not started by them for the first time, but each had respectable antiquity behind it. Smṛtis like those of Manu, Nārada and Devala and eminent authors like Udyota and Dhāreśvara had put forward the doctrine of *uparama-svatvavāda*, while the Smṛtis of Yāj., Viṣṇu, Bṛ. espoused the doctrine of *janmasvatvavāda*. Viśvarūpa who commented on Yāj. (in the first half of the 9th century) holds that ownership arises by birth[1040]. The Mitākṣarā further supports that theory by citing a sūtra of Gautama (*utpattyaiva* etc.) which is not found in the extant Gautama-dharma-sūtra. This sūtra does not occur in Aparārka and several other works and is stated by Śrīkṛṣṇa Tarkālaṅkāra (on Dāyabhāga I. 21 p. 14) to be not authoritative (*amūla*). These facts emboldened Dr. Jolly to go so far as to make the facile suggestion that it was fabricated by Vijñāneśvara or his predecessors (Tagore Law Lectures p. 110). We have seen that so early a writer as Viśvarūpa was excited over the question whether ownership arises on partition or by birth. The learned Doctor has failed to note that the ancient commentator Medhātithi (about 900 A. D.) favoured the view of ownership by birth and quotes (without name) the sūtra in a slightly different form (on Manu

1039. अतः पितापुत्रयोः पैतामहधने समविभागार्थं सदृशं स्वाम्यमिति वचनं पुत्राणां वा विभागस्वातन्त्र्यार्थमिति मतद्वयमपि हेयम्। दायभाग II. 18 p. 31.

1040. या स्वेच्छया विभागस्मृतिः सा स्वयमुपात्तद्रव्यपरा द्रष्टव्या। अतः स्वत्वे सति विभाग इति सिद्धम्। विश्वरूप on 'भूर्या पितामहोपात्ता' (या. II. 124).

IX. 156).[1041] So it was not necessary for Vijñāneśvara to fabricate a sūtra nor for any one else, for even in the absence of Gautama's sūtra the texts of Yāj. and others were quite capable of the interpretation put on them by the Mitākṣarā. It has to be noted that the Dāyabhāga[1042] does admit that in some (texts?) ownership is stated to arise by birth itself (*kvacit janmanaiveti*) and it explains that the words are not to be taken literally, but that birth is said to be the source in an indirect way, as the relation of father and son is based upon birth and on the death of the father the son's ownership arises (therefore though ownership directly arises on death, birth may be said to be the source of it as the son is the first heir because of his being born as a son to the father). The Dāyatattva does not say that the sūtra of Gautama is not authoritative, but explains it away on lines similar to those of the Dāyabhāga. It may be stated here briefly that the Dāyabhāga differs from the Mitākṣarā in four main points:—(1) The Dāyabhāga denies the theory that property is by birth, while the Mit. accepts it; (2) the Dāyabhāga lays down that the right to inherit and the order of heirs is determined by the principle of religious efficacy, while the Mit. school holds that blood relationship is the governing factor in this matter; (3) the Dāyabhāga holds that members of a joint family (such as brothers or cousins) hold their shares in quasi-severalty and can dispose of them even when there is no partition by metes and bounds; (4) the Dāyabhāga holds that even in an undivided family the widow succeeds

1041. On मनु IX. 209 मेधातिथि says 'यतस्ते पितामहधनस्येशाते। तथा चोक्तं भूर्या पित्रोभयोरिति। ... सर्वे पितामहधनभाजः स्वत्वपूर्वकत्वाद्विभागस्य।', on मनु IX. 156 he says तथाप्युक्तं सवर्णापुत्रोऽन्यायवृत्तो न लभेतैकेषामिति। तदेतदसत्। जातेरत्यन्तमान्यत्वात्। उत्पन्नो वार्थस्वाम्यमित्याचार्या इति।

1042. क्वचिज्जन्मनैवेति (जन्मनैवेति ?) च जन्मनिबन्धनत्वात् पितापुत्रसम्बन्धस्य पितृमरणस्य च स्वत्वकारणत्वात् परम्परया वर्णनम्। दायभाग I 20 p. 13. अच्युत and some of the commentators of the Dāyabhāga refer these words to the sūtra of Gautama which they read as 'उत्पत्त्यैवार्थं स्वामित्वं लभेतेत्याचार्याः'. यत्तु मिताक्षरायां 'उत्पत्त्यैवार्थं स्वामित्वं लभेतेत्याचार्याः' इति गौतमवचनं तदपि पितृस्वत्वोपरमेऽङ्गजत्वहेतुत्वेनोत्पत्तिमात्रसम्बन्धेनान्यसम्बन्धाधिकेन जनकधने पुत्राणां स्वामित्वाज्जनं पुत्रो लभेत नान्यसम्बन्धीत्याचार्या मन्यन्ते। दायतत्त्व p. 162. This is quoted almost in the same words by the व्य. प्र. p. 414 and on p. 418 the व्य. प्र. appears to hold that the explanation of the दायभाग quoted above relates to the sūtra of Gautama. अतश्च उत्पत्त्यैवार्थस्वामित्वमिति गौतमवचनस्य यज्जीमूतवाहनरघुनन्दनाभ्यां पारम्परिकोत्पत्तिस्वत्वहेतुत्वेन व्याख्यानं कृतं तदपि व्यर्थमेव। व्य. प्र. p. 418; vide व्य. प्र. p. 426 for an elaborate refutation of the Dāyabhāga passage (quoted above) and other passages that follow.

to her husband's share on his death without male issue, while the Mit. school holds that she does not do so.

Various attempts have been made to explain why in Bengal alone the laws of succession and inheritance should diverge materially from the laws prevailing in the rest of India. In two learned papers 'on the origin and development of the Bengal school of Hindu Law' contributed to the Law Quarterly Review (vol. XXI for 1905 pp. 380-392 and vol. XXII for 1906 pp. 50-63) Mr. Justice Saradacharan Mitra tries at some length to advance a theory of his own: 'The commercial spirit of the newly formed nation in the eastern corner of the Indian peninsula with its deltaic character and nearness to the sea, the new ideas which other nations trading with it were bringing in every day, the necessary admixture of races in some parts of the country, the religion of Buddha which for centuries was here the religion of the sovereign as well as of the people and the influence of the Buddhistic *tantras* combined to bring about a law of property dissimilar in material respects from the rules propounded by Brahmanical sages of old and explained and commented upon in the Mitākṣarā and the books based on the same'. His idea is that, as Buddhism profoundly affected the position of women and as tantras like the Mahānirvāṇa subscribed to the exaltation of the feminine element in nature, the ancient law of property, particularly in relation to women, came to be affected and conceptions of individual ownership, of freedom from restrictions on alienation and of the rights of females arose in Bengal which were incorporated by Jīmūtavāhana in his Dāyabhāga. With the greatest respect to the learned writer, it must be said that the grounds he urges are far from convincing. A thorough examination of his thesis cannot be undertaken here for want of space. But a few remarks must be made. As regards maritime activity the West coast of India was far more in touch with seafaring and commerce with the West than even Bengal, as the mention of the ports of Barugaza (Broach) and Kalliéné (modern Kalyan) by Greek writers, the finding of hoards of Roman coins and the existence of Syrians on the West Coast clearly establish. Buddhism had spread to central and western India as early (if not earlier than) the period when it could have spread to Eastern Bengal and Assam. Sanchi, Bhilsa, Bharhut, the Nasik and Karla caves bear eloquent testimony to the influence of Buddhism in central and western India for centuries before and after the Christian era. Besides as Mr. Justice Mitra himself

admits 'Buddhism had not its own law of property' (Law Quarterly Review vol. XXI p. 388). Buddhist countries like Burma themselves borrowed their laws of succession and inheritance from the Manusmṛti. Vijñāneśvara is far more liberal to women than Jīmūtavāhana, who does not allow any woman to succeed as heir unless she is expressly mentioned as an heir in the smṛti texts. The Mahānirvāṇa-tantra treats a sister and stepmother as near heirs and allows even a paternal uncle's widow and son's daugther to succeed; but under the Dāyabhāga these are not at all heirs. One branch of the Mitākṣarā school, viz. that of the V. Mayūkha in Western India is far more liberal about the claims of women than any school. The Marumakkatayam and Aliyasantan law in force in some districts of South India and among certain communities like the Nambudri brāhmaṇas and Nairs go to the other extreme in their regard for women but no one has so far traced that law to Buddhist or Tantric influence. The peculiarity of the Dāyabhāga, viz. the principle of religious efficacy is far more remote from rules of affinity given in the Mahānirvāṇa-tantra than the principle of consanguinity espoused by the Mitākṣarā school. Mr. Justice Mitra is wrong in his estimate of the age of Jīmūtavāhana. As stated above (on p. 557) Jīmūtavāhana relies on authors like Udyota and the smṛtis of Devala and others. It is best to admit that no satisfactory explanation can be given of the peculiar doctrines of the Dāyabhāga. They have an indigenous and independent origin and growth.

Vibhāga (partition) is defined by the Mit. [1043] as the allotment to individuals of definite portions of aggregates of wealth over which many persons have joint ownership. The Dāyabhāga found several faults with this definition, the principal criticism being that it is cumbrous and farfetched to assume that the (joint) ownership of several (sons and the like) is first produced in the entire wealth of the father and then to hold that this joint ownership is subsequently destroyed. Its own definition is: "*Vibhāga* means the indication of the ownership (of one out of many) by the casting of a ball or pebble (on a definite part of the land or cash), which (ownership) arises with

1043. विभागो नाम द्रव्यसमुदायविषयाणामनेकस्वाम्यानां तदेकदेशेषु व्यवस्थापनम्। मिता. on या. II. 114, व्यवहारसार p. 212; अपरार्क p. 729 is almost the same; एकदेशोपात्तस्यैव भूहिरण्यादावुत्पन्नस्य स्वत्वस्य विनिगमनाप्रमाणाभावेन वैशेषिकव्यवहारानर्हतया अव्यवस्थितस्य गुटिकापातादिना व्यञ्जनं विभागः। विशेषेण भजनं स्वत्वज्ञापनं वा विभागः। दाय भाग I. 8-9, p. 8.

reference to a portion only (of the heritage of land and cash), but which is indefinite because it is not possible (for one man) to deal specifically with a particular portion (of the heritage) since there is nothing to show for certain what portion belongs to whom". The Dāyabhāga denies that ownership jointly arises in all co-sharers (before partition) over every portion of the heritage and states that it arises in portions of it but there is no certain indication to show which part belongs to whom and that the portion of each is made definite and ascertained by partition effected by casting a ball or pebble on a portion (saying 'this is A's exclusive portion' etc.). The Dāyatattva[1044] (p. 163) criticizes this definition. If before partition each of the co-heirs has ownership in part only of the entire heritage, what assurance is there that the allotment of a part to one co-heir by means of casting a ball will be as to the same portion over which his ownership arose before the partition? The Dāyatattva, though differing[1045] from the Mit. as to the doctrine of ownership by birth, agrees with it as to the definition of vibhāga. The differing definitions of vibhāga given by the Mit. and the Dāyabhāga lead to different results. Under the Mit. when there is a joint family of father and sons or grandsons, all these are coparceners and the ownership of the coparcenary property is in the whole body of coparceners i. e. there is unity of ownership while the family remains joint, no coparcener can say that he is owner of a definite share, one fourth or one fifth etc. A coparcener's interest is fluctuating, is capable of being enlarged by deaths and is liable to be diminished by births. It is only on partition that a coparcener becomes entitled to a definite share. On the other hand according to the Dāyabhāga there is no ownership by birth, the sons on the father's death constitute a coparcenary but the ownership of the family property is not in all the sons as a body. Every son takes a defined share, the moment the ownership of the father ceases (owing to death etc.). The share so taken does not fluctuate with births and deaths. The sons are coparceners in the sense that their possession of the property

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1044. तत्र विभागस्तु सम्बन्धयन्तरसद्भावेन भूहिरण्याद्युत्पन्नस्य...गुटिकापातादिना अमुकस्येदमिति विशेषेण भजनं स्वत्वज्ञापनमिति वदन्ति तन्न समीचीनम् । यत्र अस्य स्वत्वं तत्रैव गुटिकापात इति कथं वचनाभावान्निश्चेतव्यः । दायतत्त्व p. 163.

1045. वस्तुतस्तु पूर्वस्वामिस्वत्वोपरमे सम्बन्धाविशेषात् सम्बन्धिनां सर्वधनप्रसूतस्वत्वस्य गुटिकापातादिना प्रादेशिकस्वत्वव्यवस्थापनं विभागः । एवं कृत्स्नधनगतस्वत्वोत्पादविनाशावपि कल्प्येते । दायतत्त्व p. 163.

inherited from the father is joint i. e. there is *unity of possession*, though there is no *unity of ownership*.

According to the Mitākṣarā sons take by birth an interest in ancestral estate. Suppose A is sole owner of an ancestral estate and has no issue. In that case there is no coparcenary. But the moment a son is born to him, a coparcenary is started. That is, under the Mitākṣarā the birth of a son starts a coparcenary. Under the Dāyabhāga there is no coparcenary between father and sons as the latter acquire no rights by birth even in ancestral property but it may subsist between brothers or uncles and nephews. Under the Dāyabhāga, the *death* of a man may start a coparcenary among his sons (who will be brothers).

Partition has two senses, (1) division by metes and bounds and (2) separation or severance in interest. Under the Mitākṣarā it is possible to have partition in both these senses. The members of a coparcenary may define, at a particular moment, the shares that each would be entitled to; but the actual division of property by metes and bounds may be postponed to a future date and in the intervening period they may enjoy the property in common as before. This is clearly brought out by the Vyavahāramayūkha[1046] when it says " even in the absence of joint (family) property severance (of interest) takes place also by a mere declaration in the form 'I am separate from thee'; for severance is merely a particular mode (or state) of the mind and this declaration merely manifests that (state or mode of the mind)". The S. V. (p. 347) has a similar passage. It is here stated that an unequivocal declaration of intention to separate effects the severance of a member from the joint family and that it is not absolutely necessary that there should be any joint property or that the property be divided by metes and bounds. This last follows as a matter of course when there is a severance of interest. This proposition has been accepted by the Privy Council[1047] and this passage of the Vyavahāra-

1046. द्रव्यसामान्याभावेपि त्वत्तोऽहं विभक्त इति व्यवस्थामात्रेणापि भवत्येव विभागः। बुद्धिविशेषमात्रमेव हि विभागः। तस्यैवाभिव्यञ्जिकेयं व्यवस्था। व्य. म. p. 94; अनेन ज्ञायते परिभाषां विना सङ्कल्पमात्रेणापि विभागसिद्धिः। स. वि. p. 347.

1047. Vide *Pandit Suraj Narain v. Iqbal Narain* 40 I. A. p. 40 (=15 Bom. L. R. 456) for this proposition and *Soundararajan v. Arunachalam* 39 Mad. 159 (F. B.) at pp. 174-175, 185 and *Girjabai v. Sadashiv* 43 I. A. 151 at p. 160 (=18 Bom. L. R. 621) for citation of the above passage of the V. Mayūkha.

mayūkha has been quoted in several cases. What constitutes an unequivocal declaration of intention to separate has as usual given rise to a good deal of case law which has to be passed over here. Under the Dāyabhāga heirs succeed on the death of the previous owner in certain definite shares and therefore partition has ordinarily only the first sense viz. assigning to the coparceners specific portions of the property inherited. Another way of separating a member[1048] is also mentioned by Manu IX. 207 and Yāj. II. 116, viz. that when a member of the family is able to fare for himself and does not desire to have a share in the family property, he should be separated by giving him some trifle (as a token). The Mit. adds that the trifle is given as a piece of evidence to prevent his sons claiming a share later on.

The principal matters to be discussed under *Dāyabhāga* or *Dāyavibhāga* are, as stated by the Saṅgraha and the Mit., four, viz. the time of partition, the property liable to partition, the mode of partition and the persons entitled to partition[1049].

Time for partition. The evolution of the son's right to demand a partition has been a process of ages. It would not be out of place to say a few words on this topic here. In most primitive societies where the patriarchal family system prevailed, the father had absolute power over the son, it was the son's duty to obey the father, alienation of family property was not allowed, the father had power over the acquisitions of all persons including the son and women were incompetent to hold property. Faint traces of these can be detected in the Vedic literature. The legend of Śunaḥśepa narrated in the Ait. Br. (33. 1 ff), where we are told that Ajīgarta sold his son for being offered as a victim to Varuṇa, that Viśvāmitra adopted Śunaḥśepa as his son, though he had already a hundred and one sons, and that he cursed and disinherited his fifty sons for their disobedience to

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1048. शक्तस्यानीहमानस्य किञ्चिद्दत्त्वा पृथक् क्रिया । या. II. 116 on which the मिता. says 'तत्पुत्रादीनां दायजिघृक्षा मा भूदिति'; व्य. म. p. 449 notes that प्रकाश explained या. II. 116 and मनु. IX. 207 differently (taking अनीहमानस्य as meaning 'who does not work though able to do so') 'प्रकाशकारस्तु यो भागिषु धनार्थं व्यापृतेषु प्रमादालस्यादिना नेहेत न व्याप्रियेत साहाय्यं न कुर्यात् स्वकर्मणा स्वव्यापारेण शक्तः साहाय्यकर्मणि क्षमोपि सन् स स्वकादंशात् स्वव्यापारजनिताद्धनाद् बहिः कार्यः किञ्चिदुपजीवनं दत्त्वा मूलधनमात्रभागीकरणीय इति ।'. अपरार्क p. 719 gives both these meanings.

1049. यस्मिन्काले यया भङ्ग्या यैरेव क्रियतेपि च । यादृशस्य च दायस्य यथाशास्त्रं प्रदृश्यते । संग्रह q. by स्मृतिच. II. p. 255, स. वि. p. 349 ; इदमिह निरूपणीयम् । कस्मिन्काले कस्य कथं कैश्च विभागः कर्तव्य इति । मिता. on या. II. 114.

his order, indicates that in the days of the Ait. Br. it was believed that in hoary ages long before it, the father's power over his sons was absolute. But a caution is necessary. It is possible to over-emphasize the legend of Śunaḥśepa ; it has to be remembered that it is a mere legend and that the Ait. Br. itself shows that the conduct of Ajīgarta was condemned as most unworthy of a decent man even according to the legend.[1050] In modern times there are rare instances where parents insure their children and then poison them or maim them for earning the insurance money. But no one says that this is usual or that modern law allows it. In Ṛg. I. 117. 17 it is stated that the eyes of Ṛjrāśva were put out by his father because the former gave a hundred rams to a she-wolf. This is a solitary instance and it is probable that the verse has some esoteric meaning or refers to some terrestrial or celestial phenomenon. In the Kāṭhaka Saṁhitā XI. 4 it is said "the father rules over the son" (*pitā putrasyeśe*). But it must be said that ideas about the father's absolute power over the sons lingered on in historic times. The Nir. (in III 4) puts forward the argument of some predecessors that daughters did not succeed to the father's wealth because women could be donated, sold or abandoned and not men, while others said that males also were liable to the same treatment as evidenced by the story of Śunaḥśepa.[1051] Vasiṣṭha (XV. 2) states that[1052] father and mother have power to make a gift or sale of the son or to abandon him. We saw above (n 1035) that Manu stated that a son's earnings belonged to his father. The Āp. Dh. S. (II. 6. 13. 10–11) emphatically says that the right to give away or sell one's child is not recognized and that the word "sale" used in connection with a bride is used only metaphorically. About the word "sale" in relation to marriage vide H. of Dh. vol. II. pp. 503–506.

On the other hand even in the Ṛg. we find that sons divided the father's property during his lifetime when the father grew old. "O Agni! men worship you in many places in various ways; they take (from you) wealth as from an aged father"

1050. स होवाच शुनःशेपो यः सकृत्पापकं कुर्यात्कुर्यादेनस्ततोऽपरम् । नापागाः शौद्रान्न्यायादसन्धेयं त्वया कृतमिति । ऐ. ब्रा. 33. 5.

1051. स्त्रीणां दानविक्रयातिसर्गा विद्यन्ते न पुंसः । पुंसोपीत्येके शौनःशेपे दर्शनात निरुक्त III. 4.

1052. तस्य (पुत्रस्य) प्रदानविक्रयत्यागेषु मातापितरौ प्रभवतः । वसिष्ठ 15. 2 ; दान क्रयधर्मश्चापत्यस्य न विद्यते । आप. ध. सू. II. 6. 13. 10.

(Rg. I. 70. 5).[1053] In the Ait. Br. (22. 9) the story of Nābhānediṣṭha[1054], the youngest son of Manu, shows that the elder brothers divided all the father's property among themselves, and excluded Nābhānediṣṭha during the father's lifetime apparently without any protest from him or in spite of it. In the Tai. S. III. 1. 9. 4-5[1055] the version of the same story is different, since it is there said that Manu himself divided his wealth among his sons and did not give any share of the paternal wealth to Nābhānediṣṭha who was away at a teacher's house as a vedic student. In the Gopatha Brāhmaṇa (IV. 17) it is said "therefore in their childhood sons subsist on their father, while in his advancing years the father subsists on the son". In the Śat.[1056] Br. (S. B. E. vol. 44, p. 157) we read "whence in early life the sons subsist on the father...whence in later life, the father subsists on his sons". In the Kauṣītaki Br. Upaniṣad (II. 15) after describing the symbolical handing over to the son of all his physical and mental powers by a father who is expecting death it is said that if after this rite the father recovers he has either to remain under the son's dominion or go out as a wanderer (a *sannyāsin*).[1057] From some of the above passages, it appears that in rare cases sons divided paternal wealth even during the lifetime of the father and against his will. The remark of Dr. Jolly that "it may be unhesitatingly set down as a fact that in the earliest period of Indian Law, partition of property was an entirely unknown proceeding" (Tagore Law Lectures p. 90) goes too far and is not fully warranted by Vedic texts. Just as the Tai. S. (III. 1. 9. 4)[1058] narrates that Manu distributed his wealth among his sons, it also speaks of the eldest son being established with ancestral

1053. वि त्वा नरः पुरुत्रा सपर्यन्पितुर्न जिव्रेर्वि वेदो भरन्त । ऋ. I. 70. 5.

1054. नाभानेदिष्ठं शंसति नाभानेदिष्ठं वै मानवं ब्रह्मचर्यं वसन्तं भ्रातरो निरभजन्सोऽब्रवीदेत्य किं मह्यमभाक्तेत्येतमेव निष्ठावमववदितारमित्यब्रुवंस्तस्माद्धाप्येतर्हि पितरं पुत्रा निष्ठावोऽववदितेत्येवाचक्षते स पितरमेत्याब्रवीत्त्वां वाव मह्यं तताभाक्षुरिति तं पिताब्रवीन्मा पुत्रक तदादृथाः &c. । ऐ. ब्रा. 22. 9 (V. 14).

1055. मनुः पुत्रेभ्यो दायं व्यभजत्स नाभानेदिष्ठं ब्रह्मचर्यं वसन्तं निरभजत् सोऽब्रवीत्कथा मा निरभागिति न त्वा निरभाक्षमित्यब्रवीत् । तै. सं. III. 1. 9. 4.

1056. तस्मात्पूर्ववयसे पुत्राः पितरमुपजीवन्ति । ...तस्मादुत्तरवयसे पुत्रान्पितोपजीवति । शतपथ XII. 2. 3. 4.

1057. स यद्यगदः स्यात्पुत्रस्यैश्वर्ये पिता वसेत्परि वा व्रजेत् । कौ. उप. II. 15,

1058. ब्रह्मवादिनो वदन्ति किंदेवत्यं पौर्णमासमिति प्राजापत्यमिति ब्रूयात्तेनेन्द्रं ज्येष्ठं पुत्रं निरवसाययदिति तस्माज्ज्येष्ठं पुत्रं धनेन निरवसाययन्ति । तै. सं. II. 5. 2. 7.

wealth. The Āp. Dh. S. (II. 6. 14. 6 and 10–12) refers to both these passages of the Tai. S. but concludes that equal division among sons is the proper mode and that giving a major part of the estate to the eldest alone is forbidden by the śāstras[1059]. These lead to the conclusion that equal distribution among all sons was believed to be the rule and giving the major portion to the eldest son was an exception (and a rare case) even in the Vedic age. The Ait. Br. (19. 3) speaks of the right[1060] of Indra to primogeniture (jyaiṣṭhya) and pre-eminence (śraiṣṭhya). This right of the eldest son to special treatment at the time of partition persisted in the times of Manu (IX. 112 ff) and Yāj. (II. 114) also and even in modern times it is recognized to some extent in the case of impartible estates and even in ordinary families on the ground of custom or from the nature of the grants made by the former Governments or the British Government (such as Jaghirs and Saranjams). Both Kauṭ. and Kāt. declare that customs of countries, castes, villages and groups varying rules of partition and inheritance should be enforced by the king[1061]. Dr. Jolly (ibid. p. 98) further relies on the fact that the Āpastamba-dharmasūtra mentions no other kind of partition than that made by the father. But this is far from conclusive. Āpastamba was a great purist and idealist. He ignores several matters which are wellknown to have existed long before his time. For example, he takes no notice of the several kinds of secondary sons and he does not allow a brāhmaṇa to take up a weapon even for examining it except when he is murderously attacked (I. 10. 29. 7–8), while Manu (VIII. 345–349), Gautama VII. 6 and 25 and others allow a brāhmaṇa much greater latitude. Therefore Āpastamba's silence cannot lead to the positive conclusion of the absence of any other method of partition. As a matter of fact, Gautama (15. 19) who is generally regarded as prior to Āpastamba states that brāhmaṇas that had separated from their fathers against the latter's will were not fit to be

1059. ज्येष्ठो दायाद इत्येके । ... तच्छास्त्रैर्विप्रतिषिद्धम् । मनुः पुत्रेभ्यो दायं व्यभजदित्यविशेषेण श्रूयते । अथापि तस्माज्ज्येष्ठं पुत्रं धनेन निरवसाययन्तीत्येकवच्छ्रूयते । आप. ध. सू. II. 6. 14. 6, 10–12.

1060. सोऽब्रवीद् बृहस्पतिं याजय मा द्वादशाहेनेति तमयाजयत्ततो वै तस्मै देवा ज्यैष्ठ्याय श्रैष्ठ्यायातिष्ठन्त । ऐ. ब्रा. 19. 3.

1061. देशस्य जात्या सङ्घस्य धर्मो ग्रामस्य वापि यः । उचितस्तस्य तेनैव दायधर्मं प्रकल्पयेत् ॥ अर्थशास्त्र III. 7 (last verse); कात्या q. by वि. र. p. 505 reads देशस्य ... ग्रामस्य यो भवः । उचितः स्यात्स तेनैव दायभागं प्र०.

invited for dinner at a śrāddha.[1062] That shows that partition of sons from the father against the father's will was wellknown long before Gautama. Dr. Jolly also (ibid p. 90) relies on an anonymous smṛti text (quoted by the Mit. in its introduction to Yāj. II. 114) which absolutely prohibits the sale of land. But this is irrelevant. The text could not be taken literally when we have seen that sales of land have been taking place for at least two thousand years. All that the text means is that a sale should be clothed in the form of a gift[1063]. Similarly the few smṛti passages that include lands and houses among indivisible properties are to be explained as having in view the fragmentation of a field into small uneconomic plots or holdings or the division of a single small house among numerous co-sharers. It is impossible to believe that the texts meant that houses could never be partitioned among co-heirs. All that we can reasonably infer is that as a general rule such partitions were looked upon with disfavour by society. One may concede that this sentiment continued long after even Gautama and Āpastamba and even in the 20th century a Hindu son suing his father for partition incurs great opprobrium.

Apart from the inference to be drawn from some of the Vedic passages quoted above, it follows that partition did take place, though probably rarely, during the father's lifetime and even against his will, as indicated by Gautama's dictum. It is now to be seen what the smṛtis and the medieval writers say about the time of partition. One time was when the father divided the property among his sons during his lifetime as evidenced by the Tai. S. III. 1. 9. 4, Āp. Dh. S. II. 6. 14. 1, Gaut. 28.2, Baud. Dh.S. II. 2.8, Yāj. II. 114, Nār. dāyabhāga 4. Another time was after the death of the father (Gaut. 28. 1, Manu IX. 104, Yāj. II. 117, Nār. dāyabhāga 2). The Dāyabhāga[1064] admits only these two times for partition viz. on the cessation of the father's

1062. न भोजयेत् ... पित्रा चाकामेन विभक्तान् । गौ. 15. 15 and 19.

1063. हिरण्योदकदानेनेति स्थावरे विक्रयो नास्ति कुर्याद्वाधिमनुज्ञया इति स्थावरस्य विक्रयप्रतिषेधात् 'भूमिं यः प्रतिगृह्णाति यश्च भूमिं प्रयच्छति । उभौ तौ पुण्यकर्माणौ नियतं स्वर्गगामिनौ' इति दानप्रशंसादर्शनाच्च । विक्रयेपि कर्तव्ये सहिरण्यमुदकं दत्त्वा दानरूपेण स्थावरविक्रयं कुर्यादित्यर्थः । मिता. on या. II. 114. The दायतत्त्व quotes this view of the मिताक्षरा and remarks 'वस्तुतस्तु स्थावरविक्रयनिषेधोऽविभक्तस्थावरविषयः ।' Vide n. 882 above.

1064. तदेवं पितुस्स्वत्वापगम एकः कालोऽपरश्चानपगत एव पितुः स्वाम्ये पितुरिच्छयेति कालद्वयम् । दायभाग I. 38 ; तस्मात्पतितस्वनिस्पृहस्योपरमैः स्वत्वापगम इत्येकः कालोऽपरश्च सति स्वत्वे तदिच्छात इति कालद्वयमेव युक्तम् ॥ दायभाग I. 44.

ownership (by death or renunciation of the world as an ascetic or because he has lost all desires) and during the father's lifetime at his own desire. The V. P. (pp. 429 and 434, 435) strongly criticizes the Dāyabhāga as to these two. Some writers like Jīmūtavāhana went so far as to hold that even though the father be dead there should be no partition among the sons during their mother's life[1065]. The Mit. (following Gaut. 28. 1–2) indicates three principal times for partition,[1066] viz. (1) at the father's desire during his lifetime, (2) when the father has lost all desire for worldly goods, desists from sexual intercourse and the mother is past the age of child-bearing, partition may take place at the desire of the sons even against the wish of the father (Gaut. 28. 2, Nār. dāyabhāga 3, Bṛ. S. B. E. 33 p. 369 verse 1); (3) after the death of the father. The Mit. relying on Śaṅkha's[1067] text adds that even though the mother may not be past child-bearing, yet the sons can partition at

1065. पित्रोरिति द्विवचननिर्देशात्सोदरभ्रातॄणां पितृधनविभागोऽपि मातुरभाव एव कार्यः । दायभाग II. 5, p. 27. श्रीकृष्ण was constrained to explain कार्यः as प्रशस्तः thereby showing that this was only recommendatory. V. P. (p. 436) strongly criticizes this view of the Dāyabhāga pointing out that Manu IX. 104 mentions the father and mother separately and indicates that partition of mother's wealth takes place after her death. Vide दायभाग III. 9, p. 60 also 'अत एकस्मिन्नपि जीवति विभागो न धर्म्यः किन्तु उभयोरभावे ।'. The दायतत्त्व also (p. 170) says मातरि जीवन्त्यां सोदराणां विभागो न धर्म्यः । यथा शङ्खलिखितौ रिक्थमूलं हि कुटुम्बमस्वतन्त्राः पितृमन्तो मातुरप्येवमवस्थितायाः ।

1066. निवृत्ते रजसि मातुर्जीवति चेच्छति । गौ. 28. 2 (this refers to two times); मातुर्निवृत्ते रजसि प्रत्तासु भगिनीषु च । निवृत्ते चापि रमणे पितर्युपरतस्पृहे ॥ नारद (दायभाग 3). This verse is variously read and explained by the commentators. V. R. (p. 462) notes that Prakāśa read either निरपेक्षे च रमणे or निरस्ते चापि रमणे. The Dāyabhāga (I. 32–33 p. 18) reads विनष्टे चाप्यशरणे and explains विनष्टे पतिते अशरणे गृहस्थाश्रमरहिते. The व्य. प्र. (p. 433) reads निवृत्ते चापि रमणात् and हलायुध also read it so (V. R. p. 462). The दायभाग (I. 47, p. 24) says दत्तासु भगिनीषु चेति न कालार्थं किं तु तासामवश्यं दानार्थम्.

1067. यथाह शङ्खः अकामे पितरि रिक्थविभागो वृद्धे विपरीतचेतसि रोगिणि च । मिता. on या. II. 114, मदनरत्न; पितर्यशक्ते व्यवहाराज्ज्येष्ठः प्रतिकुर्याद्वनन्तरो वा कार्यज्ञस्तदनुमतो न त्वकामे पितरि रिक्थविभागो वृद्धे विपरीतचेतसि दीर्घरोगिणि वा ज्येष्ठ एव पितृवदर्थान् पालयेदितरेषां रिक्थमूलं हि कुटुम्बमस्वतन्त्राः पितृमन्तो मातुरप्येवमवस्थितायाः । दायभाग I. 43, p. 23 (q. as शङ्खलिखितौ and adds अतो न त्वकामे पितरि इत्येतदेव कार्याक्षमे पितरि रिक्थविभाग इति शङ्खलिखितम्. It will thus be seen that the two schools read the passage of Śaṅkha-Likhita differently. The व्य. मयूख (p. 90) omits the words कामं दीने &c. The मदनरत्न has the words कामं दीने ... चिन्तयेत्. The V. R. (p. 460) has the same passage of हारीत (as in the Dāyabhāga) with slight variations, viz. जीवति पितरि पुत्राणामर्थादानविसर्गविभागाक्षेपेष्वस्वातन्त्र्यं कामं दीने प्रोषिते आर्ते गते वा ज्येष्ठोऽर्थांश्चिन्तयेत् । हारीत q. by दायभाग I. 42 p. 23.

their desire, even against the father's will if the father pursues an immoral or irreligious mode of life or is afflicted with a chronic disease or is very old. Nār. (dāyabhāga 16) is similar. It should not be supposed that the Mit. holds that there are only three times for partition; according to it there are other times also (as in the text of Śaṅkha quoted by it). This is made clear by the V. P. p. 434. The Dāyabhāga reads the text of Śaṅkha-Likhita differently and takes it to mean that as long as the father is alive there can be no partition against his will even if he be very old or suffering from a chronic disease or has not all his wits about him, and that in such a contingency the eldest son or with his consent the next younger brother who is capable may manage the family affairs. The Dāyabhāga quotes a similar passage of Hārīta (which is also quoted by the Madanaratna, the Vyavahāramayūkha and other digests). On account of the remarks of the Mit. some works like the Madanapārijāta (pp. 645 ff) speak of four times for partition, viz. during the father's lifetime at his choice (Yāj. II. 114), even against his will when the mother is past child-bearing and the father is free from all sexual desires and does not care for wealth (Nār. dāyabhāga 3), when the father is old or follows the path of *adharma* or suffers from an incurable disease then even against his will (relying on Śaṅkha as quoted in the Mit.), and after the father's death. The V. Nir. (p. 108) is almost of the same view.

The Mitākṣarā is quite clear on the point that the son has an absolute right of partition of ancestral property during his father's lifetime even against the father's wish. The discussion in the Mitākṣarā may be briefly set out here. In Yāj. II. 120 (latter half) it is stated that in the case of grandsons the partition is according to (or through) the fathers i. e. it is *per stirpes* and not *per capita*. The text of Yāj. (*anekapitṛkāṇām*[1068] *tu pitṛto bhāgakalpanā*) is explained by the Mitākṣarā in this way that although sons and grandsons have rights of ownership by birth in the grandfather's property, yet when each of several sons dies leaving a differing number of sons (one leaves two, another three and so on) or when some sons are alive and others die leaving their own sons, then partition takes place *per stirpes* i. e. the grandsons born of a particular deceased son

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1068. It may be noted that the Bālambhaṭṭī (p. 150) and V. P. (p. 449) support the reading प्रमीतपितृकाणां तु instead of अनेकपितृकाणां तु in या. II. 120.

get among themselves the share which their deceased father would have got if living i. e. grandsons appear to get partition of property through the son (their father) and not directly by themselves. On this a doubt arises as follows:—If the father of several sons is separated from his brothers as to the grandfather's property or if the father has no brother and is joint with his father (i. e. the grandfather of the grandson) the grandson cannot demand a share in the grandfather's wealth (since Yāj. II. 120 has been explained as meaning that when the father is dead then the assignment of shares among grandsons is according to the share of the father). Another doubt is:— even if a partition can be had by the grandsons in these cases it will be only if the father so desires. To this the Mit. replies emphatically[1069] that in the grandfather's property the ownership of father and son is wellknown in the world and therefore *partition* (in the above two cases of doubt) does take place. The Mit. further on expressly says that even when the mother is not past child-bearing and the father still cares for wealth and worldly affairs, partition of grandfather's wealth does take place at the desire of the son even if the father is unwilling. The Mit. makes it clear that the rule of division *per stirpes* is a special rule laid down by the texts (*vācanikī vyavasthā*) for a special case and that in other cases the primary rule of ownership by birth applies. From Manu IX. 209 the Mitākṣarā further draws the inference that even against the father's wish a son can demand partition of property acquired by the grandfather. This is the modern Hindu Law in the Mitākṣarā school generally recognised by the Courts in British India. In *Apaji Narhar*[1070] *v. Ramchandra* a majority of the Full Bench of the

1069. नष्टानामपि पुत्राः पित्र्यानेवांशाँल्लभन्त इति वाचनिकी व्यवस्था। अधुना विभक्ते पितर्यविद्यमानभ्रातृके वा पौत्रस्य पैतामहे द्रव्ये विभागो नास्ति अध्रियमाणे पितरि पितृतो भागकल्पनेत्युक्तत्वात्। भवतु वा स्वार्जितवत् पितुरिच्छयैवेत्याशङ्किते आह। भूर्या पिता० (याज्ञ. II. 122) ... तत्र पितुः पुत्रस्य च स्वाम्यं लोकप्रसिद्धमिति कृत्वा विभागोऽस्ति। तस्माच्च पितुरिच्छयैव विभागो नापि पितुर्भागद्वयम्।... तथा च सरजस्कायां मातरि सस्पृहे च पितरि विभागमनिच्छत्यपि पुत्रेच्छया पैतामहद्रव्यविभागो भवति। मिता. The बालम्भट्टी (pp. 151-152, of Gharpure's edition) very clearly explains this passage. The व्य. प्र. (p. 460) also says अत्र च पुत्रेच्छया यो जीवद्विभागो यश्चाजीवद्विभागः स एकेच्छयापि भवत्यविशेषात्। ... अयं च पुत्राणां विभागः पुत्रपौत्रप्रपौत्रपर्यन्तः समो नात्रोत्पत्तितः प्रत्यासत्तिक्रमेणाधिकारक्रमः। पुत्रादीनां त्रयाणामेव पार्वणे पिण्डदानाधिकारात्।; vide स्मृतिच. II. p. 279 for a similar passage.

1070. Vide 16 Bom. 29, where Telang J., who was great as a Sanskrit scholar as well as a judge, differed from three learned judges. On pp. 43-51 Telang J. gives a very lucid explanation of the words of the Mit.

Bombay High Court held that a son cannot in the lifetime of his father sue his father and uncles for a partition of the family property and for possession of his share therein, when the father does not assent to such a suit, although the son has a right by birth in ancestral property. The other High Courts have dissented from this view of the majority of the Bombay Full Bench and have followed the dissenting judgment of Telang J.[1071].

When the son's right of ownership by birth in ancestral property came to be recognised by such smṛtis as that of Yāj., it followed as a logical consequence that any person who acquires a right by birth can demand partition and separate possession of his share at any time. It has been already seen that even before Gautama sons separated from their father against his will, but this was condemned by the sages and obloquy and infamy attached to such conduct. Some of the smṛtis recognised the son's right to partition even in the father's lifetime under great restrictions. More than fifteen centuries passed (from Gautama to the Mitākṣarā) before the son's right to separate from his father during the latter's lifetime and against his desire was clearly, ungrudgingly and emphatically recognized. The Vīramitrodaya also clearly recognizes this right of the son. But even among writers that generally follow the Mit. there were some that could not bring themselves to admit this right of the son. For example, the Madanapārijāta (p. 662) asserts that merely at the will of the son there can be no partition. Under the Dāyabhāga, these questions cannot arise, as the son has no right by birth in ancestral property.

This evolution of the son's right to demand partition even during the father's lifetime received a fillip from certain religious sentiments entertained in ancient times. Gaut. (28. 4) remarks that if, instead of remaining united, brothers separate there is increase of spiritual merit (*vibhāge tu dharmavṛddhiḥ*). Manu IX. 111 states "they (the brothers) may stay united or may stay separate if they desire an increase of *dharma*; by living separate *dharma* increases; therefore separation is meritorious".[1072]

1071. Vide *Jogul Kishore v. Shib Sahai* 5 All. 430 (F. B.), *Rameshwar v. Lachmi* 31 Cal. 111, *Subba v. Ganas*, 18 Mad. 179, *Digambar v. Dhanraj* 1 Patna 361.

1072. मनु IX. 111 is quoted as प्रजापति's by व्यव. नि. p. 408. The मदनरत्न regards मनु and प्रजापति as different 'पृथग्दैवपित्र्यकर्मकरणाद्धर्मवृद्धिमपेक्षमाणा विभजेयुरित्याहतुर्मनुप्रजापती एवं सह वसेयुर्वा etc.'.

This shows that there was an option either to remain joint after the father's death or to become separate. Śaṅkha-Likhita say that brothers may stay together since being united they will prosper (materially).[1073] Bṛ. provides that in the case of members of a joint family that live together and have a common kitchen the worship of gods, Manes and brāhmaṇas is single for all, while when they become separate such worship will be separately carried on in each house.[1074] Nār. (dāyabhāga 37) lays down that when brothers are undivided the performance of religious acts is single for all of them but when there is a partition, the religious acts are separately performed by each. Dharma means here mainly such religious acts as the performance[1075] of the five great daily sacrifices (*pañca mahāyajñas*). When the family is joint, worship of gods, Vaiśvadeva, honouring of family guests are only single for the whole family and all participate in the spiritual benefits derived from such acts, but when the members become separate, each performs these religious acts separately. Manu III. 67 lays down that each householder has to perform with the *gṛhya* fire kindled at the time of marriage all gṛhya rites such as morning and evening offerings, the five great sacrifices and the daily cooking of food. The Saṅgraha seems to have held that *dharma* refers to the performance of *agnihotra*, but the Sm. C. II. p. 259 and V. P. (437-438) do not accept this and hold that even when joint any coparcener can perform all śrauta and smārta rites like agnihotra with the help of the undivided joint estate and so *dharma* means only the worship of gods and Manes and the honouring of guests. Vyāsa[1076] also has a verse similar to Nār. and Bṛ.

1073. कामं वसेयुरेकतः संहता वृद्धिमाप्स्यन्ति । शङ्खलिखितौ in वि. र. p. 458. The मदनरत्न reads सह वसेयुः and आप्स्येरन्.

1074. एकपाकेन वसतां पितृदेवद्विजार्चनम् । एकं भवेद्विभक्तानां तदेव स्याद् गृहे गृहे ॥ बृह. q. by अपरार्क p. 719, व्यव. नि. p. 468, कुल्लूक on मनु IX. 111, हरदत्त on गौ. 28. 4, वि. र. p. 459.

1075. अधीतवेदेषु अधिगतवेदार्थेषु चाग्निहोत्राद्यनुष्ठानसमर्थेषु च विभाग एव श्रेयान् । अपरार्क p. 719; धर्मः पितृदेवद्विजार्चनजन्यः । उक्तं च तथैव संग्रहकारेण । क्रियते स्वं विभागेन पुत्राणां पैतृकं धनम् । स्वत्वे सति प्रवर्तन्ते तस्माद्धर्म्याः पृथक् क्रियाः ॥ प्रवर्तन्ते स्वसाध्याग्निहोत्रादय इति शेषः । अत्रोच्यते &c. । स्मृतिच. III. p. 259; तस्मात्पञ्चमहायज्ञादिधर्म एव धर्मशब्देनात्र ग्राह्यः । व्य. म. p. 438; स्वत्वाविशेषादेवाविभक्तद्रव्येण यत्कृतं तत्र दृष्टादृष्टे कर्मणि सर्वेषां फलभागित्वम् । दायतत्त्व p. 164.

1076. भ्रातॄणां जीवतोः पित्रोः सहवासो विधीयते । तदभावे विभक्तानां धर्मस्तेषां विवर्धते ॥ व्यास q. by अपरार्क p. 719, व्यव. नि. p. 409, दायभाग III. 8.

Partition was generally made when all the coparceners were major,[1077] but from Kauṭ. (III. 5), Baud. Dh. S. (II. 2. 42) and Kāt. (844–45) it appears that the minority of a coparcener did not operate as a bar to partition. Kauṭ. (III. 5) says 'partition takes place when the persons separating have attained majority; but (the separating coparceners) should keep in the custody of the mother's relatives of those coparceners who are minors or of the elders of the village the share of the minors after all debts of the family are paid off, till the minor coparceners attain majority. The same rule applies to a member (of a joint family) that has gone abroad'. Baud. employs almost the same words. Kāt. provides "partition is ordained among coparceners who have attained (years of) understanding of worldly affairs and in the case of males they attain this understanding at the 16th year. The property (share in joint family estate) of those who have not attained years of discretion, being made free from expenses (debts etc.), should be kept (by the other major coparceners) with the relatives or friends of the minor members. The same should be done to the share of those who have gone abroad." This shows that partition could take place even when some members of the family were minors and even a single member could demand at his will a partition of his share as expressly stated by the Dāyabhāga (III. 16–17), the V. P. and other works[1078]. There is a controversy among commentators whether minority terminated at the beginning or end of the 16th year. Nār. IV. 35 states[1079] that a person is a minor (*bāla*) till the 16th year. From a verse (attributed to Aṅgiras by Mit. on Yāj. III. 243 and quoted without name by Haradatta on Gaut. II. 6) it appears that one was to be regarded as a *bāla* till

1077. प्राप्तव्यवहाराणां विभागः । अप्राप्तव्यवहाराणां देयविशुद्धं मातृबन्धुषु ग्रामवृद्धेषु वा स्थापयेयुराव्यवहारप्रापणात् प्रोषितस्य वा । अर्थशास्त्र III. 5; तेषामप्राप्तव्यवहाराणामंशान् सोपचयान् सुनिगुप्तान्निदध्युराव्यवहारप्रापणात् । बौ. ध. II. 2. 42; संप्राप्तव्यवहाराणां विभागश्च विधीयते । पुंसां च षोडशे वर्षे जायते व्यवहारिता ॥ अप्राप्तव्यवहाराणां च धनं व्ययविवर्जितम् । न्यसेयुर्बन्धुमित्रेषु प्रोषितानां तथैव च ॥ कात्या. 844–845 q. by अपरार्क p. 722, दायभाग (III. 17 p. 72) and व्य. प्र. p. 460 (last two have verse 845 only). The विवादचन्द्र (p. 63) quotes the verse संप्राप्त° for the proposition that there is to be no partition with a minor 'बालेन समं न विभागः संप्राप्त° इति वचनात्'.

1078. अत्र च पुत्रेच्छया यो जीवद्विभागो यश्चाजीवद्विभागः स एकेच्छयापि भवत्यविशेषात् । अत एव विभागं प्रकृत्य यत्कात्यायनेनोक्तं — अप्राप्त°, इति तदपि सङ्गतम् । अन्यथा तद्बुद्धिमन्तरेण विभागाभावे तद्धनस्य बन्धुमित्रेषु न्यासविधानमनुपपन्नं स्यात् । व्य. प्र. p. 460.

1079. बाल आ षोडशाद्वर्षात्पोगण्ड इति शब्द्यते । नारद (ऋणादान 35).

the beginning of the 16th year.[1080] A verse of Kāt. appears to hold that minority ends at the beginning of the 16th year; many commentators also hold this view, but several such as Haradatta (on Gaut. X. 48), V. R p. 599, V. P. p. 263 expressly state that minority ends at the end of the 16th year.[1081] It may be stated that according to Gaut. X. 48-49, Manu VIII. 27, Vas. 16. 8, Viṣṇu Dh. S. III. 65 the king was to guard the property of minors, women and helpless people. In modern times under the Indian Majority Act (Act IX of 1875) the age of majority is 18 (or 21 in certain cases only) except in matters of marriage, dower, divorce and adoption. In these last matters the ancient Hindu Law will apply to Hindus[1081a]. Similarly a partition could be made even though the wife of a coparcener was pregnant. It was therefore that Vas. 17. 41 advised postponing partition till the delivery of the pregnant wives of coparceners, or Yāj. II. 122 and Manu IX. 216 provide for a son born after partition between father and sons.

The next question is what property is liable to be partitioned. A few preliminary remarks on property must be made here. Property is generally divided by most smṛtis into two kinds, *sthāvara* (immovable, such as lands and houses) and *jaṅgama* (movable). For example, Bṛ. (S. B. E. vol. 33 p. 323 verse 17) and Kāt. (516) speak of both kinds of property as subjects of pledges or mortgages. There is another classification in Yāj, II. 121 and a few other smṛtis viz. property is of three kinds.

1080. अशीतिर्यस्य वर्षाणि बालो वाप्यूनषोडशः । प्रायश्चित्तार्धमर्हन्ति स्त्रियो रोगिण एव च ॥ इत्यङ्गिरःस्मरणात् । मिता. on या. III. 243.

1081. यावद्गर्भो व्यवहारप्राप्तः षोडशवर्षो भवति । हरदत्त on गौ. X. 48; पुत्राधिकारे बौधायनः तेषामप्राप्तव्यवहाराणां° । आङ् अभिविधौ तेन सप्तदशवर्षात्प्राक् । वि. र. p.599; कात्यायनोपि । ... नाप्राप्तव्यवहारैस्तु° । इति । नाप्राप्तव्यवहारैः हेयोपादेयपरिज्ञानविशेषरहितैः षोडशवर्षैरित्यर्थः । षोडशवार्षिकस्य व्यवहारज्ञत्वमाह । गर्भस्थैः &c. (नारद IV. 35.) । व्य. प्र. p. 263.

1081a. In Bengal minority was held to terminate at the end of the 15th year; vide *Cally Churn v. Bhuggobutty* 10 Bengal L. R. 231 (F. B.) at p. 240 and *Mothoormohun v. Sourendro* 1 Cal. 108 (F. B.). In Bombay and Madras it has been held to terminate at the end of the 16th year; vide *Shivaji v. Datu* 12 Bom. H. C. R. 281, *Reade v. Krishna* 9 Mad. 391, 397. But see 40 Mad. 925, 929. As the Indian Majority Act does not apply to adoption, it was held in *Basappa, v. Sidramappa* 43 Bom. 481 that a Hindu widow who was about 15 years old could validly adopt a son, even though a contract by her would have been void on the ground of minority.

bhū (land including houses), *nibandha*[1082] (inaccurately rendered as 'corrody') and *dravya* (gold, silver and other movables). Sometimes however the word "dravya" is employed in the sense of all property, whether movable or immovable, as in Bṛ. (*dravye pitāmahopātte jaṅgame sthāvare tathā*) quoted in note 1032 above. Property, according to ancient Hindu Law,

1082. दत्त्वा भूमिं निबन्धं वा कृत्वा लेख्यं तु कारयेत् । आगामिभद्रनृपतिपरिज्ञानाय पार्थिवः ॥ याज्ञ. I. 318. The व्य. मयूख p. 27 states that it occurs in बृह. also. In कात्या. (882) we have उदकं चैव दासश्च निबन्धो यः क्रमागतः (q. by अपरार्क p. 725, वि. र. p 504). 'निबन्धो वाणिज्यादिकारिभिः प्रतिवर्षं प्रतिमासं वा किञ्चिद्धनमस्मै ब्राह्मणायास्यै देवतायै वा देयमित्यादि प्रभुसमयलभ्योऽर्थः । स्मृतिच. II. p. 55; निबन्धः आकरादौ राजादिदत्तं नियतलभ्यम् । व्य. मयूख p. 28 and दीपकलिका (reading नियतद्रव्यम्); दायतत्त्व p. 166 states that this was the explanation given by कल्पतरु. निबन्धो राज्ञामुकस्यैकस्मिन् पर्णभरकक्रमुकभरकादावियन्ति पर्णादीनि देयानीति शासनरूपतया यद् वृत्तित्वेन दीयते तदुच्यते । व्य. प्र. p. 445.

The word "nibandha" means a periodic payment or allowance in cash or kind permanently granted by a king, a corporation or a village or a caste to a person, a family, a *math* or a temple. The Mit. (on Yāj. I. 318 and II. 121) explains it as a delivery or payment of so many leaves (of betel or the like) on each bundle of leaves or so many rupees on each load of merchandise or so many betelnuts on each load of betelnuts; the Sm. C. explains it as the wealth to be obtained under the order or direction of a king or other authority that dealers in commodities should pay every year or month a certain amount to a certain brāhmaṇa or shrine; the V. Mayūkha (p. 28) explains "what is granted by a king or the like, to be obtained at fixed times from mines and the like" and on p. 131 paraphrases it as "vṛtti". Nibandha is rendered as corrody by Colebrooke in his Digest, but as observed by the Privy Council in *Fattehsangji v. Desai Kallianraiji* L. R. 1. I. A. 34 at p. 51 it is not a very happy rendering. In *Ghelabhai v. Hargovan* 36 Bom. 94 (at p. 101) the explanation of *nibandha* by the V. Mayūkha is construed as conveying that it is not the king alone who can make a grant of a nibandha and it is held that the office of a hereditary priest (*yajamāna-vṛtti*) is a nibandha and ranks as immovable property. Bombay Regulation V of 1827, section 1, clause 1 includes hereditary offices among immovable property. Vide *Collector of Thana v. Krishnanath* 5 Bom. 322 at pp. 331-32 (for a discussion of what is included in *nibandha*), *Collector of Thana v. Hari* 6 Bom. 546 (F. B.) at pp. 555-559, *Lakshmandas v. Manohar* 10 Bom. 149, *Jatindra Mohan v. Ghanashyama* 50 Cal. 266 at p. 271 (for various definitions of *nibandha* and for the view that an annuity in favour of the settlor's daughter for her life and then to her son charged on and payable out of the settlor's estate was a nibandha). With Vijñāneśvara's examples of nibandha one may compare an inscription of *śake* 1088 (1167 A D.) from the Ron Taluka of Dharwar District in E. I. vol. 20 p. 109 at p. 121 ('the income granted by the dealers in betel leaves; a hundred leaves for one cart load, a hundred for a bullock load, fifty for a man's load').

may be divided into two classes, (1) joint family property, (2) separate property. Joint family property is either ancestral property or property jointly acquired[1083] with or without the aid of ancestral property or property acquired separately but thrown into the common stock (Manu IX. 204). The Mit. on Yāj. I. 120 states 'among unseparated brothers, if the common stock be improved or augmented by one of them through agriculture, trade or similar means, an equal distribution nevertheless takes place and a double share is not allotted to the acquirer.' This contains the doctrine of merger of estate by blending. Vide *Shibaprasad v. Prayag Kumari* L. R. 59 I. A. 331 = 34 Bom. L. R. 1567. Ancestral property (*apratibandha dāya*) is all property inherited by a male from his father, paternal grandfather or paternal great-grandfather, in which according to the Mit. School, the sons, grandsons and great-grandsons[1084] of the person who inherits it acquire an interest *by birth*. Separate property also includes what is called self-acquired property (*svārjita*), which will be discussed a little later on. If a person obtains a share of ancestral property on partition, it has been held that it is his separate property if he has no son, grandson or great-grandson, but if there be any of these then it is ancestral property in his hands so far as he and any of his male descendants are concerned. Under the Dāyabhāga, as the son does not acquire ownership by birth in ancestral property, there is hardly any distinction between ancestral property and separate property so far as the father's powers of alienation are concerned. A few of the outstanding features of the Dāyabhāga system have already been set out above and some may be discussed later.

1083. सामान्यार्थसमुत्थाने विभागस्तु समः स्मृतः । या. II. 120 ; समवेतैस्तु यत्प्राप्तं सर्वे तत्र समांशिनः । तत्पुत्रा विषमसमाः पितृभागहराः स्मृताः ॥ बृह. q. by अपरार्क p. 727, व्यव. नि. p. 424, वि. र. p. 481 ; भ्रातॄणामविभक्तानां यद्युत्थानं भवेत्सह । न पुत्रभागं विषमं पिता दद्यात्कथंचन ॥ मनु IX. 215 (= अनुशासनपर्व 105. 13).

1084. The Mit. speaks only of the son's and grandson's right by birth in ancestral property and does not expressly mention the great-grandson. But other writers like the author of the Viramitrodaya quoted above in note 1069 mention the great-grandson as having a right by birth and this has been accepted by the courts. The words "ancestral property" have a technical sense viz. it is *paitāmaha* i. e. paternal grandfather's or great-grandfather's property. Vide *Muhammad Husain v. Kishwa Nandan* 64 I. A. 250 where this is made clear. In a recent case from Patna, 23 Patna 599 (F. B.), it has been held that, where a grandfather makes a gift of his self-acquired property to his son (the father), the son or sons of the latter can treat it as ancestral property and take an interest in it by birth unless the gift makes it clear that it was made exclusively for the donee's benefit only.

A person while he is a member of a joint Hindu family under the Mit. and has an interest in joint family property may have separate property of his own acquired in various ways. The different sources of ownership have been already mentioned above (pp. 317 and 548). The different kinds of separate property are mainly these: (1) property taken as obstructed heritage, that is, property inherited from any person other than the father, father's father or father's father's father (such as a brother, uncle etc.)[1085]; (2) a gift of a small portion of ancestral movable property made through affection by the father to his issue (smṛti quoted by Mit.)[1086]; (3) gift or bequest of separate property made by the father[1087] to his sons; (4) gifts and bequests made by other relations and friends and gifts at the time of marriage; (5) ancestral property lost to the family and recovered from a stranger by a member of a joint family with his own efforts without assistance from joint family property; (6) separate earnings and gains of learning or science (*vidyādhana*). A few remarks will be made on some of these in the sequel.

It is a remarkable fact that the smṛti texts on separate property do not expressly mention gifts received from strangers by a member of a joint family as the separate property of that particular member. The only gifts mentioned are those from friends, or those received at the time of marriage (called *audvāhika* in Yāj. II. 118 and Manu IX 206) or at a *madhuparka* in

1085. A decision of the P. C. from Madras held that property inherited by two brothers living as members of a joint family from their maternal grandfather became joint property in their hands with rights of survivorship. Vide *Venkayyamma v. Venkataramanayamma* L. R. 29 I. A. 156. See 27 Mad 300 (F. B.) and 29 All. 667 for the difficulties caused by L. R. 29 I. A. 156. But it may be taken that even in Madras such property inherited from the maternal grandfather will now be held to be the separate property of the two brothers. Vide *Muhammad Husain Khan v. Kishva Nandan Sahai* L. R. 64 I. A. 250 which explains away (on pp. 264-265) the case of L. R. 29 I. A. 156.

1086. शौर्यभार्याधने चोभे यच्च विद्याधनं भवेत् । त्रीण्येतान्यविभाज्यानि प्रसादो यश्च पैतृकः ॥ q. by मिता. in intro. to या. II. 114; व्यव. नि. p. 443, वि. र. p. 501 ascribe it to Nārada (it is नारद, दायभाग 6).

1087. In Bombay, Allahabad and Oudh such gifts by the father of his separate property are held to be separate property of the son or sons. Vide *Jugmohandas v. Sir Mangaldas* 10 Bom. 528, 579. But in Calcutta they are held to be ancestral (*Hasari Mall v. Abaninath* 17 C. W. N. 280) and in Madras it is a question of intention (*Nagalingam v. Ramchandra* 24 Mad. 429.)

honour of a learned man, a priest etc. It is probable that gifts from strangers to a member of the joint family that did not fall within the several classes of separate property mentioned above belonged to the whole family. The concept of the separate property of a member of a joint family was of slow growth. Originally all property however acquired by any member might have been held to belong to the whole family. This is indicated to some extent by Manu VIII. 416, which was (as shown above on pp. 555–556) however interpreted by Śabara, Medhātithi, the Dāyabhāga and others in subsequent times, as meaning that the acquirer (son or wife) had no independent power of disposal though he or she was owner of what was earned by him or her. It is noticeable that so late a writer as Haradatta[1088] relies on this verse of Manu and remarks that while the father is alive whatever is earned by a member, whether learned or not, belongs to the father (on Gaut. 28. 29). The Dāyabhāga[1089] (II. 66–72) quotes a text of Kāt. (851) "the father gets two shares or half of the wealth acquired by the son" and explains it in two ways. If the son acquires wealth with the help of ancestral funds, the father takes half of it, the acquirer gets two shares and the other sons one share each; if the son acquires wealth without using ancestral funds, the father and acquirer take two shares each and the others take nothing. Another meaning is that if the father is learned he takes half, but if he is not so, he takes only two shares. The V. P. (pp. 444–45) severely criticizes the Dāyabhāga for these remarks. The first inroad on the conception that the earnings of all in the family belonged to the head of the family was made in the times of the sūtras by the recognition of *vidyādhana* as separate property. Manu[1090] IX. 208 (= Viṣṇu Dh. S. 18. 42) states that what one (member of a joint family, a brother etc.) may acquire by his own labour without using (or without detriment to) paternal estate he shall

1088. तत्र सूत्रद्वयमपि चैतद् भ्रातृविषयमेव । पितरि तु जीवति ... विदुषाविदुषा वाऽविभक्तेनार्जितं पितुरेव । भार्या पुत्रश्च ... तद्धनम् ॥ इति मनुः । हरदत्त on गौ. 28. 29.

1089. तथा पुत्रार्जितेपि धने पितुरंशद्वयं द्वावंशाविति गृहीतांशद्वयमिति चाविशेषश्रुतेः । तुल्यक्रमाह कात्यायनः । द्व्यंशहरोर्धहरो वा पुत्रवित्तार्जनात् पिता । मातापि पितरि प्रेते पुत्रतुल्यांशभागिनी । ... ... तत्र पितृद्रव्योपघातेन पुत्रार्जितवित्तस्यार्धं पितुरर्जकस्य पुत्रस्यांशद्वयमितरेषामेकैकांशिता । अनुपघाते तु पितुरंशद्वयमर्जकस्यापि तावदेव इतरेषामनंशित्वम् । यद्वा विद्यादिगुणसम्पन्नस्य पितुरर्धहरत्वं विद्यादिनापि ज्येष्ठस्यैवाधिकदर्शनात्, विद्यादिशून्यस्य जनकतामात्रेण द्व्यंशित्वम् । दायभाग II. 66–72, pp. 49–52.

1090. अनुशासन 105. 12 closely resembles मनु IX. 208. It is 'अनुपघ्नन् पितृद्रव्यं जघ्नाश्रमफलोऽथ्वगः । स्वयमीहितलब्धं तु नाकामो दातुमर्हति ॥'

not share with others if he does not desire to do so, because that acquisition was made by his own activity. Manu IX. 206 mentions besides *vidyādhana*, gifts from friends, gifts at the time of marriage and at *madhuparka* as the separate property of a person. Yāj. (II. 118-119) prescribes: 'whatever is acquired by a person himself without detriment to or expenditure of paternal wealth, gifts from friends, gifts at marriage, these are not liable to be divided among a man's coparceners; similarly he who recovers ancestral property lost to the family (and not recovered by the father and others) would not have to share it at a partition with his coparceners nor his gains of learning'. The construction to be put on these words was a bone of contention even before Viśvarūpa. The Mit. understands that the words 'whatever is acquired without detriment to the paternal wealth' are to be understood as qualifying each of the following four kinds of property.[1091] The result is that if a gift is acquired by a member from a grateful person who was placed under obligation by spending family wealth, if property was acquired by gift from a father-in-law who was paid from the family property some wealth for securing the bride for that member (as in an *āsura* marriage) or if the property lost to the family was recovered with the help of paternal estate or if a man learnt at the expense of the family and made gains from that learning, then these kinds of properties were liable to be partitioned among all members. The result of taking the first half of Yāj. II. 118 as a qualification of the subsequent four kinds of property (as done by the Mit.) is that if a man receives a gift from a stranger even without detriment to the paternal estate the gift was liable to be divided among all members. The reason of the Mit. is that, if the first half of Yāj. II. 118 is not a qualifying clause of the four kinds of property, then the following four kinds need not be expressly mentioned at all. If whatever is acquired by a member himself without

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1091. अत्र च पितृद्रव्याविरोधेन यत्किञ्चित्स्वयमर्जितमिति सर्वशेषः। ... तथा पितृद्रव्याविरोधेनेत्यस्य सर्वशेषत्वादेव पितृद्रव्याविरोधेन प्रतिग्रहलब्धमपि विभजनीयम्। मिता. on या. II. 118-119. The word शेष is used here in the technical sense of Jaimini III. 1. 2 (śeṣah parārthatvāt) on which Sabara says 'यस्तु अत्यन्तं परार्थस्तं वयं शेष इति ब्रूमः.' विश्वरूप is opposed to this 'पितृद्रव्योपघातेनापि मैत्राद्यविभाज्यमेव, आरम्भसामर्थ्यात्। अन्ये तु मैत्रादिकमेव पितृधनानुपघातार्जितमविभाज्यमिच्छन्ति.' On या. II. 118 the दायभाग remarks मैत्रादिग्रहणं प्रदर्शनार्थम् and again (VI. 1. 39 p. 115) तस्मात्साधारणधनोपघातार्जितं धनं विभजेदिति विधिः। शौर्यादिपदं च वाक्येषु प्रदर्शनार्थम्।

detriment to paternal or joint estate is by itself separate property then the following four will only be particular illustrations of the proposition contained in the first half of Yaj. II. 118. It would be opposed to the usage of *śiṣṭas* to say that gifts from friends or gifts at the time of marriage or gains of learning acquired at the expense of the family estate become the separate property of a person and, as to *vidyādhana* acquired from learning at the expense of the family, opposed to the express text of Nār. (dāyabhāga 10) " when one brother maintains the family of another brother who is engaged in studying the śāstras, he shall receive a share of the wealth gained by that study, though he (the supporting brother) be ignorant himself ". Further, if the first half of Yāj. II. 118 were taken as a separate and independent clause by itself then it would follow that what is acquired by *pratigraha* (as a gift to a learned brāhmaṇa) without detriment to the paternal estate would be indivisible but the usage of the *śiṣṭas* is the opposite of this. That there was such a usage about *pratigraha* is admitted by the Dāyabhāga (VI. 1. 54 p. 121). It must be stated however that this view of the Mit. about the first half of Yāj. II. 118 is not shared by several writers and works such as the Dāyabhāga VI. 1. 8. p. 106, Dīpakalikā, Viśvarūpa, V. R. p. 501, Aparārka p. 723.

As regards family property lost to the family by the adverse acts of a stranger but recovered by a member with his own efforts without using ancestral estate, certain provisions deserve notice. Manu IX. 209 (= Viṣṇu Dh. S. 18. 43), Bṛ. (S. B. E. 33 p. 371 verse 12) and Kāt.[1092] (866) lay down the special rule that if the father recovers property lost to the family, whether movable or immovable, with his own effort without using joint family funds, he may retain the whole of it as his self-acquisition. The rule of Yāj. II. 119 applies only where the property lost and recovered by one member (not the father) with his own effort and without assistance from joint estate is movable (which then becomes wholly his self-acquisition), but if the property so recovered by one member (who is

1092. अनाश्रित्य पितृद्रव्यं स्वशक्त्याप्नोति यद्धनम् । दायादेभ्यो न तद् दद्याद्विद्यालब्धं तु यद्भवेत् । व्यास q. by वि. र. p. 502, स्मृतिच. II. p. 276, दायभाग VI. 1. 5. p. 106 and VI. 1. 36 p. 113 ; स्वशक्त्यापहृतं नष्टं स्वयमाप्तं च यद्भवेत् । एतत्सर्वं पिता पुत्रैर्विभागे नैव दाप्यते ॥ कात्या. 866 q. by अपरार्क p. 728, स्मृतिच. II. p. 280, परा. मा. III. p. 498.

not the father) is land, then the recoverer gets one fourth of it as his reward (according to Śaṅkha)[1093] and the remainder is divided equally among all members of the family including the recoverer. These rules have been followed in modern times by the British Indian Courts[1094].

Vidyādhana (gains of learning) has undergone the greatest changes of fortune since the earliest times to modern days. It was probably the first kind of self-acquisition recognised in very early times. Though the Āp. Dh. S. and Baud. Dh. S. say nothing about it, yet Gaut.[1094a] (28. 28-29) lays down that all members (of a joint family), if not learned, should divide equally whatever is earned by them (by agriculture etc.) but what a learned man himself acquires by his learning he may not share with his unlearned brothers if he so desires. Haradatta says that this applies only between brothers that are joint. Vasiṣṭha 17. 51 appears[1095] to give two shares to the acquirer of wealth at a partition among brothers and his rule probably represents a very early stage when the acquirer could not retain the whole of his self-acquisition but got only two shares

1093. एवं च पूर्वनष्टां च यो भूमिमेकश्चेदुद्धरेच्छ्रमात्। यथाभागं भजन्त्यन्ये दत्वांशं तु तुरीयकम्॥ इति शङ्खवचनं भ्रात्राद्युद्धृतविषयम्। अत्र स्वयं तुरीयांशं गृहीत्वा भ्रात्रादिभिः सहोद्धर्ता गृह्णीयादन्यथा विषमस्तुहं स्यात्। दायतत्त्व p. 166 and p. 177. The मिता. (as printed) reads उद्धरेत् क्रमात् (which seems to be a misreading for श्रमात्) and remarks 'तत्र क्षेत्रे तुरीयांशमुद्धर्ता लभते शेषं तु सर्वेषां सममेव' and it requires that the recovery must be with the consent of the other members. Vide मद. पा. 684 and दायभाग. VI. 2. 38-39 p. 129. The वि. र. (p. 499) attributes it to हारीत and remarks 'यच्च संहितायां हारीतः पूर्वनष्टां ...तुरीयकमिति वाक्यं लिखति स्म तच्च स्मृतिमहार्णवकामधेनुकल्पतरुपारिजातप्रभृत्यलिखनादयुक्तमेव'. This remark of वि. र. is quoted by the दायतत्त्व (p. 177) and dissented from, as the मिताक्षरा and दायभाग cite this verse. As the verse is stated by the वि. र. to be not found in the पारिजात and as it is quoted in the मदनपारिजात it follows that the पारिजात is a different work from the मद. पा.

1094. Vide for example, 5 Mad. H. C. R. 150 at p. 152-153, 4 Mad. 250 at pp. 259-260 ; *Bajaba v. Trimbak* 34 Bom. 106 at pp. 110-111.

1094a. स्वयमर्जितमवैद्येभ्यो वैद्यः कामं न दद्यात्। अवैद्याः समं विभजेरन्। गौ. 28. 28-29 ; विद्यामधीते इति वैद्यः। हरदत्त ; पाणिनि IV. 2. 59 is 'तदधीते तद्वेद'.

1095. येन चैषां स्वयमुपार्जितं स्यात्स द्व्यंशमेव हरेत्। वसिष्ठ 17. 51 (which reads स्वयमुत्पादितं स्यात्). मिता. on या. II. 119 and स्मृतिच. II. p. 275 read as above, दायभाग II. 41 p. 42 as समुत्पादितं, परा. मा. III 560 'यदुपार्जितं'.

in it and the rest of the joint family members took one share each in it. Manu IX. 206, Yāj. II. 119, Nār. (dāyabhāga 11), Kāt.[1096] (868) and Vyāsa say generally that *vidyādhana* is not liable to be divided at a partition. Among writers of smṛtis Kāt. contains the most elaborate treatment of vidyādhana and of self-acquisitions in general. It will be set out in the sequel. But some of the smṛtis point out that even vidyādhana is partible, if learning was acquired at the expense of the family funds (as in Nār. dāyabhāga 10 referred to above) or when the learning was acquired in the family house itself from the father or an elder brother (Kāt.[1097] 874). The Dāyabhāga (VI. 1 42–49) discusses at great length the views of Śrīkara on Yāj. II. 118 and Manu IX. 208 and dissents from them and states his conclusion as follows: A man since his birth depends upon his family for food and maintenance and so if the words "without expending ancestral estate" were literally and widely interpreted, hardly any man can say that no paternal wealth was expended on him and so earnings of whatever kind would have to be deemed to be partible and there would be no propriety or purpose in the words of Manu IX. 208. Therefore it must be understood as done by Viśvarūpa that the detriment meant is not the expenditure of food in maintaining a person in the house from infancy, but that when a member acquires estate by his learning or in any other way without giving or spending paternal wealth for acquiring that, then only it becomes his self-acquisition[1098].

1096. उपन्यस्ते तु यल्लब्धं विद्यया पणपूर्वकम् । विद्याधनं तु तद्विद्याद् विभागे न विभज्यते ॥ कात्या. 868 q. by अपरार्क p. 724, कुल्लूक on मनु IX. 206, दायभाग VI. 2. 1 p. 122 ; विद्याप्राप्तं शौर्यधनं यच्च सौदायिकं भवेत् । विभागकाले तत्तस्य नान्वेष्टव्यं स्वरिक्थिभिः । व्यास. q. by अपरार्क p. 725 स्मृतिच. II. p. 274.

1097. वैद्यो वैद्याय नाकामो दद्यादंशं स्वतो धनात् । पित्र्यं द्रव्यं समाश्रित्य न चेत्तेन तदाहृतम् ॥ नारद, दायभाग 11 ; कुले विनीतविद्यानां भ्रातृणां पितृतोपि वा । शौर्यप्राप्तं तु यद्वित्तं विभाज्यं तद् बृहस्पतिः । कात्या. 874 q. by स्मृतिच. II. p. 275, परा. मा. III. p. 560, व्य. म. p. 126. From this verse it appears that Kāt. echoes the views of Bṛ. In the व्यव. नि p. 447 this verse is ascribed to बृह.

1098. यतो विशेषणानर्थक्यादेव भक्षणाद्युपभोगोपयुक्तधनोपघातादन्यस्यैवोपघातादिरूपस्य वर्जनार्थत्वात् ।... अत एवोक्तं विश्वरूपेण पितृद्रव्यं दत्त्वा यदि नोपार्जितं धनं तदा तस्यैवासाधारणं वैवाहिकवदेवोक्तं न तु भक्षणाद्युपभोगमात्रेण तस्य स्वल्पपानादितुल्यत्वादित्यन्तेन । दायभाग VI. 1 47 and 49 pp. 118–119. The printed विश्वरूप has no corresponding passage.

Kāt. (867–873) defines[1099] and illustrates vidyādhana as follows :—

That wealth is said to be the gains of *vidyā* which is acquired by means of learning received from another while subsisting on food furnished by others, when a matter (a doubt or difficult point) has been placed (before an assembly of learned men) with a wager, whatever is gained by (the display of) one's learning is known as *vidyādhana*, which is not divided at a partition. What is acquired from a pupil (i. e. by following the profession of teaching), by performing the work of a priest at a sacrifice, by propounding a question, by solving a doubtful point, by exhibiting one's knowledge, by disputation with a rival, what is gained by deep learning–all these are declared to be *vidyādhana*, which is not divided at a partition. The same is the rule in the case of artisans and as to whatever is obtained (as a reward) over and above the proper price of an article (which surplus becomes the self-acquisition of the member selling it). After vanquishing a rival in a wager whatever is obtained by (superior) knowledge should be known as vidyādhana and it is not liable to be partitioned. This is the view of Bṛhaspati. What is earned by an assertion of one's learning, what is obtained from a pupil (i. e. by teaching) and what is acquired on the analogy of priests officiating at a sacrifice–all these are known as vidyādhana, according to Bhṛgu. What is obtained by the superiority of one's learning and from a sacrificer and from a pupil–all this is declared to be vidyādhana; acquisitions other than these are common (i. e. jointly owned) with others.

Kāt. distinguishes between *śauryadhana* (reward given by the king or a master when pleased with a soldier or servant

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1099. परभक्तोपयोगेन विद्या प्राप्तान्यतस्तु या । तया प्राप्तं धनं यत्तु विद्याप्राप्तं तदुच्यते ॥ उपन्यस्ते तु यल्लब्धं विद्यया पणपूर्वकम् । विद्याधनं तु तद्विद्याद्विभागे न विभज्यते ॥ शिष्यादार्त्विज्यतः प्रश्नात्सन्दिग्धप्रश्ननिर्णयात् । स्वज्ञानशंसनाद् वादाल्लब्धं प्राध्ययनाच्च यत् । विद्याधनं तु तत्प्राहुर्विभागे न विभज्यते । शिल्पिष्वपि हि धर्मोऽयं मूल्याद्यच्चाधिकं भवेत् ॥ परं निरस्य यल्लब्धं विद्यया पणपूर्वकम् । विद्याधनं तु तद्विद्यान्न विभाज्यं बृहस्पतिः ॥ विद्याप्रतिज्ञया लब्धं शिष्यादाप्तं च यद्भवेत् । ऋत्विक्न्यायेन यल्लब्धमेतद्विद्याधनं भृगुः ॥ विद्याबलकृतं चैव याज्यतः शिष्यतस्तथा । एतद्विद्याधनं प्राहुः सामान्यं यदतोऽन्यथा ॥ कात्या. 867–873 q. by अपरार्क p. 724, वि. र. p. 502, व्य. म. p. 125 ; व्यव. नि. (pp. 444–45) quotes all except परं निरस्य; the first is quoted by the मिता. on या. II. 118–119; all except the first and last are quoted in the दायभाग VI. 2. 1-14 which remarks at the end: तदयमर्थो यथा कयाचिद् विद्यया यल्लब्धमर्जकस्यैव तत् , नेतरेषाम् । प्रदर्शनार्थं तु कात्यायनेन विस्तरेणोक्तं श्रीकरादिभ्रमनिरासार्थम् । अतः स्वज्ञानख्यापनादिना यत् प्रतिग्रहलब्धं तदपि विद्याधनमेव विद्ययैव विदुषे प्रतिग्रहदानात् ।

who putting his life in danger did an act of valour) and *dhvajāhṛta* (what is recovered in a battle after putting one's life in danger of death and after putting to flight the army of the adversary). Nār. (dāyabhāga 6) and Bṛ. (S. B. E. vol. 33 p. 381 verse 78) appear to put both under *śauryadhana*. Kāt. divides the *bhāryādhana* of Nār. and Bṛ. into two, viz. *kanyāgata* (what is obtained at the time of marriage with a maiden of the same caste) and *vaivāhika* (wealth that comes with one's wife). So it is the same as the *vaivāhika* (of Manu IX. 206) and the *audvāhika* (of Yāj. II. 118). Vyāsa mentions[1100] a limitation that even wealth acquired by valour does not become the exclusive property of the acquirer if he used a horse and weapons belonging to the joint family; in such a case the acquirer gets two shares and the other members of the family one share each.

In modern times vidyādhana has been a fruitful source of litigation. The first verse of Kāt. quoted above has been cited in several cases such as *Durga Dat v. Ganesh Dat* 32. All. 305 at p. 312, where it is said that Kātyāyana's definition of vidyādhana is not exhaustive, but only illustrative (the same is the view of the Dāyabhāga).

The leading cases that discuss the texts and lay down propositions are noted below[1101].

Two propositions were well established by the cases, viz. (1) that money earned by a member of a joint Hindu family by the practice of a profession requiring special training was joint family property, provided such training was imparted at the expense of joint family property; (2) that gains made by personal labour and without the use or help of joint family funds by a member of a joint Hindu family, who was maintained out of joint family funds and received no more than an elementary or ordinary education suitable to his position as a member of that particular family were the self-acquisitions of such member. But all doubts and disputes are now set at rest by the Hindu

1100. साधारणं समाश्रित्य यत्किञ्चिद्वाहनायुधम् । शौर्यादिनाप्नोति धनं भ्रातरस्तत्र भागिनः । तस्य भागद्वयं देयं शेषास्तु समभागिनः ॥ व्यास q. by अपरार्क p. 725, व्यव. नि. p. 446, स्मृ. च. p. 127.

1101. *Chalakonda Alasani v. Chalakonda Ratnachalam* 2 Mad. H. C. R. 56; *Bai Manchha v. Narotamdas* 6 Bom. H. C. R. (A. C. J.) 1; *Pauliem v. Pauliem* L. R. 4 I. A. 109; *Lakshman v. Jamnabai* 6 Bom. 225; *Krishnaji v. Moro* 15 Bom. 32, *Metharam v. Rewachand* 45 I. A. 41 (= 45 Cal. 666), *Gokalchand v. Hukamchand* 48 I. A. 162.

Gains of Learning Act (Act XXX of 1930) which provides that, notwithstanding any custom, rule or interpretation of Hindu Law, no gains of learning (i. e. education whether elementary, technical, scientific, special or general and training of every kind which enables a person to pursue any trade, industry or avocation), whether made *before* or *after* the commencement of the Act, shall be held not to be the exclusive and separate property of the acquirer merely by reason of his learning having been wholly or in part imparted to him by any member, living or deceased, of his family or with the aid of the funds of the joint family or of any member thereof or by reason of himself or his family having, while he was acquiring his learning, been supported wholly or in part by the joint funds of the family or the funds of any member thereof. This Act is thus retrospective.

All property of a joint family other than the separate property of individual members is liable to partition, i. e. as stated by Kāt., property of the grandfather, of the father and whatever is acquired by each member (by the use of joint funds[1102] is so liable). Separate property is said to be impartible (*avibhājya*) on account of the source from which or the manner in which it is acquired. But there are certain kinds of property which from their very nature are not allowed to be partitioned and have to be enjoyed in common or by turns.

The oldest provision on this point is contained in Gautama[1103] (28. 44–45) that water (well), (property set apart or destined for) pious uses or sacrifices and food prepared (for festivals etc.) shall not be divided nor women connected with individual

1102. पैतामहं च पित्र्यं च यत्किञ्चित्स्वयमार्जितम् । दायादानां विभागे तु सर्वमेतद् विभज्यते ॥ कात्या. q. by दायभाग VI. 1. 1 p. 105, स्मृतिच. II. p. 273, व्यव. नि. p. 446, परा. मा. III. p. 556 'स्वयमर्जितं पित्राद्यविभक्तद्रव्योपयोगेन' स्मृतिच.

1103. उदकयोगक्षेमकृतान्नेष्वविभागः । स्त्रीषु च संयुक्तासु । गौ. 28. 44–45. This applies, acc. to Haradatta, to the concubines not only of the father but also to those of any member of the joint family. Vide *Nagubai v. Monghibai* 53 I. A. 153, 159–160 where Gaut. and Mit. are quoted.

members of the family (as concubines). Śaṅkha-Likhita[1104] forbid the partition of a building,[1104a] water vessels, ornaments and clothes that are daily worn by the respective members. Similarly Uśanas says[1105] "there is no partition among agnates even up to the thousandth generation of what is acquired by officiating as priests, of a field, of vehicles, prepared food, water and women". Prajāpati (quoted by Sm. C. II p. 277) asserts that there is no partition of houses, fields and temples (*yājya*), gifts made through favour by the father or mother. The prohibition against dividing a house or a field is explained in three ways. The Mit. on Yāj. II. 119 explains that it has in view a brāhmaṇa's son from a wife of the kṣatriya or vaiśya class, when the brāhmaṇa acquired it as a religious gift made to him for his learning, since Bṛ. (S. B. E. 33 p. 374 verse 30) states "land bestowed[1106] as a gift on a brāhmaṇa should not be given to the son (of the brāhmaṇa) from a wife of the kṣatriya caste; even if the father gives it to the son of the kṣatriya wife, after the father's death, the son of the wife of the brāhmaṇa class

1104. न वास्तुविभागो नोदपात्रालङ्कारोपयुक्तवाससाम् । शङ्खलिखित q. by अपरार्क p. 726, दायभाग VI. 2. 29 p. 127, व्य. म. p. 129, वि. र. p. 503. This sūtra is variously read. The दायभाग reads न वास्तुविभागो नोदकपात्रालङ्कारानुपयुक्तस्त्रीवाससामपां प्रचाररथ्यानां विभागश्चेति प्रजापतिः, while अपरार्क reads न चास्ति विभागोऽस्त्रोदपात्रालङ्कारसंयुक्तस्त्रीवाससामुपचाराद्यानां विभागश्चेति प्रजापतिः; the वि. र. reads mostly like the दायभाग 'न ... नोदपात्रालङ्कारानुपयुक्तस्त्रीवाससामपां प्रचारवर्त्मनामविभागश्चेति प्रजापतिः' and explains उदपात्रं लौहवारिभाजनं, अलङ्कारोऽङ्गन्यस्त एव, अनुपयुक्तमुपभुक्तं तेनैकोपभोगविषयस्त्रीवाससां न विभाग इति मान्यते । अपां प्रचारवर्त्मनां च प्रचरणमार्गाणाम् ।'. मेधा. on मनु IX. 219 seems to have this sūtra in view. If the reading is अनुपयुक्त it means 'what is of no use (as books to an ignorant member)', acc. to श्रीकृष्ण. स्त्री refers to women other than female slaves.

1104a. Compare sections 2 and 4 of the Partition Act (IV of 1893) about the division of a house and *Vaman v. Vasudev* 23 Bom. 73.

1105. अविभाज्यं सगोत्राणामा सहस्रकुलादपि । याज्यं क्षेत्रं च पत्रं च कृतान्नमुदकं स्त्रियः ॥ उशनस् acc. to मिता on या. II. 119, स्मृतिच. II. p. 277, परा. मा. III. p 564, and व्यास. acc. to दायभाग VI. 2. 25 p. 127, वि. र., व्य. म. p. 130 ,'याज्यं याजनकर्मलब्धम्' मिता.; 'याज्यं यागस्थानं देवता वा न तु याजनलब्धं धनं तस्य विद्याधनत्वेनैव गतार्थत्वात्' दायभाग. Acc. to the Dāyabhāga, yājya means 'an idol or place of worship'. Three explanations are given in the व्य. म. p. 130 'वास्तुक्षेत्रयोरविभाज्यत्वमाहुस्तत्र्यंवास्तुगोमचारक्षेत्रादिपरम् । प्रतिग्रहोपात्तयोस्तयोः क्षत्रियादिविभागप्रतिषेधपरं पूर्वोक्तनिषेधात् । अल्पमूल्ययोर्मूल्येन विभागो न स्वरूपत इत्येवंपरं वा'. पितरि जीवति यस्मिन्वास्तौ येन गृहोद्यानादिकं कृतं तत्तस्याविभाज्यं पितुरप्रतिषेधेनानुमतत्वात् । दायभाग p. 128.

1106. न प्रतिग्रहभूर्देया क्षत्रियादिसुताय वै । यद्यप्येषां पिता दद्यान्मृते विप्रासुतां हरेत् ॥ q. by मिता. on या. II. 119 (without name), ascribed to बृह. by मेधा॰ on मनु. IX. 153, व्यव नि. p. 431, व्य. म. p 103.

may take it away ". Another explanation is that the prohibition refers to a site or dwelling for religious purposes and to a field that is meant for grazing cows. The third explanation is that the prohibition implies that when the house or field is of small value it should not be partitioned by metes and bounds, but there should be partitioning of the price only. The Dāyabhāga gives yet another explanation (VI. 2. 30 p. 128) that if during the father's lifetime any of the sons builds a house or lays out a garden on a family site, then it should not be divided at a partition but assigned to him only.

The basic verse on things impartible from their very nature is Manu IX. 219[1107] (= Viṣṇu Dh. S. 18. 44) which says "clothes, vehicles, ornaments, cooked food, water (well etc.), women, *yogakṣema* and ways—these are declared to be impartible". All commentators explain that clothes ordinarily worn by the several members are impartible, provided they are more or less equal in value but not costly ones nor new ones. The same remark applies to vehicles and ornaments. *Pracāra* means either " ways leading to the house, garden and the like " (Mit., Aparārka, and V. P.) and also ' ways and pasture lands for cows and the like ' (Sm. C. II. p. 277, Kullūka). The Mit. (on Yāj. II. 118-119) states a special rule from Bṛ. that[1108] the clothes and ornaments worn by the father, the bed and the vehicle used by him should on his death be donated to the brāhmaṇa invited at the father's śrāddha. As to ornaments, the Mit. following Manu IX. 200 says that those ornaments that are ordinarily worn by the respective members or their wives should not be divided, but those that are not so used everyday should be divided. A well is to be enjoyed by turns and not to

1107. वस्त्रं पत्रमलङ्कारं कृतान्नमुदकं स्त्रियः । योगक्षेमं प्रचारं च न विभाज्यं प्रचक्षते ॥ मनु. IX, 219 ; विष्णु reads न विभाज्यं च पुस्तकम्. The express mention of books in Viṣṇu Dh. S. is an indication of its posteriority to Manu. Several meanings are assigned to पत्र, योगक्षेम and प्रचार by different writers. All commentators of Manu except Nandana explain पत्र as vehicle (i. e. a horse, cart &c.), while नन्दन reads पात्र (water vessel) and अपरार्क p. 725, वि. र. 504, मद. पा. p. 665 explain पत्र as document evidencing a debt.

1108. पितृधृतवस्त्राणि तु पितुरूर्ध्वं विभजता श्राद्धभोक्त्रे दातव्यानि । यथाह बृहस्पतिः । वस्त्रालङ्कारशय्यादि पितुर्यद्वाहनादिकम् । गन्धमाल्यैः समभ्यर्च्य श्राद्धभोक्त्रे समर्पयेदिति । मिता. on या. II, 119.

be partitioned by valuing it.[1109] If there be a single female slave (not a concubine) she was to be made to work for the divided members by turns, but if there be several slaves they could be assigned to each or their price could be divided. The expression "*yogakṣema*" has been variously explained from very ancient times. Laugākṣi (quoted by the Mit.) states "those who know the truth say that 'yoga' means 'sacrifices' and kṣema means *pūrta* (i. e. works of charity like wells). They both (i. e. the money set apart for these or the merit derived from these) are impartible, as are also the bed and the (wooden) seat (used by the father or other member)." From this verse the Mit. concludes that *yogakṣema* means sacrificial acts performed with śrauta or smārta fire and charitable gifts such as constructing a tank or park etc. For iṣṭa and pūrta vide H. of Dh. vol. II. pp. 147, 843–844 and pp. 914–915 n. 2112 for the Mit. on yogakṣema. The words "yoga" and "kṣema" occur even in the Ṛgveda VII. 86. 8, X. 89. 10, X. 166. 5 and in Tai Br. III. 9. 19. 3 and Ait. Br. 37. 2. Even though joint family funds are spent for these still they are impartible. The Mit. further states that according to some *yogakṣema* means[1110] "royal ministers and purohita" who bring about the welfare of people, while others hold that the word means "umbrella, *chowrie*, weapons, shoes, and the like". From Gaut. IX. 63 and XI. 16 it appears that *yogakṣema* came to mean even before Gautama's time "comfortable life" or "easy and happy way of maintenance" (particularly for a learned brāhmaṇa). The V. R. p. 504 tells[1111] us that,

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1109. Vide *Shantaram v. Waman* 47 Bom. 389 for the proposition that, both according to the Mit. and the Vyavahāra-mayūkha, a piece of land reserved as a common passage at the time of partition cannot be subsequently divided and *Nathubhai v. Bai Hansgavri* 36 Bom. 379 and *Govind v. Trimbak* 36 Bom. 275 for the propositions that rights of way and rights to wells and water belonging to a joint family are, if numerically unequal, indivisible, that there is a presumption that they continue joint and undivided even after partition, unless it is proved that at the partition a right of way or to water was exclusively allotted to a single member (at p. 277 and p. 282 the texts about water are quoted).

1110. योगक्षेमशब्देन योगक्षेमकारिणो राजमन्त्रिपुरोहितादय उच्यन्त इति केचित्। छत्रचामरशस्त्रोपानत्प्रभृतय इत्यन्ये। मिता. on या. II. 119. Vide *Parthasarathy v. Ti›uvengada* 30 Mad. 340, 343–44 for yogakṣema in the Mit.

1111. योगक्षेमं पितृक्रमेण राजकुलाद्युपजीव्यमिति प्रकाशः। हलायुधस्तु योगो योगहेतुर्नौकादिः क्षेमः क्षेमहेतुर्दुर्गादीत्याह। वि. र. p. 504. The meaning given by Prakāśa appears to be the one intended in some medieval grants called *yogakṣema* grants, for an instance of which *vide Vaman v. the Collector of Thana* 6 Bom. H. C. R. (A. C. J.) p. 191 at p. 196.

according to Prakāśa, yogakṣema means "maintenance or annuity descending from the father (to the son) at a royal palace" and that Halāyudha explained yoga as meaning a ship or the like and kṣema as fort. The Sm. C. II. p. 277 after quoting Laugākṣi gives an alternative explanation that yogakṣema means the wealth gained by a learned brāhmaṇa resorting to a rich man for his maintenance.[1112]

Kauṭ. (III. 5) states[1113] the view of the ācāryas that those who are poor may divide even their water vessels and Kauṭ. adds that this dictum is fallacious or contradictory. Kāt. (882–884) brings together several things that are impartible[1114] "money that is entered in a document and is set apart for a religious purpose, water, women, a *nibandha* (periodic gain) that descends hereditarily, clothes worn (on the body every day), ornaments, whatever else that is not fit to be divided—these should be so employed by co-sharers that they may be enjoyed (in common by all) at the proper time. A pasture for cattle, ways, clothes worn on the body (every day), money lent and what is set apart for religious purposes—these should not be divided. This is the view of Bṛhaspati."

Bṛhaspati (S. B. E. 33 p. 382 verses 79–84) has a good deal to say about things impartible. He finds fault with Manu IX. 219 for his somewhat wide proposition that clothes, ornaments

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1112. अथवा योगक्षेमार्थमुपासितेश्वरसकाशाद् यो रिक्थानां लाभः स एवात्र योगक्षेमशब्देनोच्यते । स्मृतिच. II. p. 277. गौ. IX. 63 and विष्णुधर्मसूत्र 63. 1 prescribe योगक्षेमार्थमीश्वरमधिगच्छेत् .

1113. उदपात्राण्यपि निष्किञ्चना विभजेरन्नित्याचार्याः । छलमेतदिति कौटिल्यः । अर्थशास्त्र III. 5. For the meaning of छल, vide न्यायसूत्र I. 2. 51. कौटिल्य means that if a man has at least water pots he is not निष्किञ्चन so far, as, if he is really निष्किञ्चन, he can have no water pots even.

1114. धनं पत्रनिविष्टं तु धर्मार्थं च निरूपितम् । उदकं चैव दाराश्च निबन्धो यः क्रमागतः ॥ धृतं वस्त्रमलङ्कारो नानुरूपं तु यद्भवेत् । यथा कालोपयोग्यानि तथा योज्यानि बन्धुभिः ॥ गोप्रचारश्च रथ्या च वस्त्रं यच्चाङ्गयोजितम् । प्रयोज्यं न विभज्येत धर्मार्थं च बृहस्पतिः ॥ कात्या. 882–884 q. by अपरार्क pp. 725–726, वि. र. pp. 504–505. स्मृतिच. II. p. 277 refers to the first and last ; दायभाग VI. 2. 27 p. 127 has the verse गोप्रचारश्च &c and reads प्रायोज्यं and शिल्पार्थं for धर्मार्थम् . दाराश्च is probably a misreading of दासश्च. The first half may be split up in two 'bond debts and what is set apart for a religious purpose' (देवाराधनाय घण्टादि—says वि. र. p. 505) ; 'प्रयोज्यं प्रयुक्तमृणमिति हलायुधः, प्रयोज्यं प्रयोगार्हं पुस्तकादि तच्च विभज्येत मूर्खादिभिरिति पारिजातः' वि. र. p. 505.

and the like are impartible. He says[1115] "those who declared that clothes and the like are impartible have not given proper thought. In the case of the rich, their wealth may consist of (valuable) clothes and ornaments. If these (clothes and ornaments) be kept joint (i. e. undivided) they cannot yield subsistence nor can they be assigned to one alone (out of many co-sharers). They should therefore be distributed with skill, otherwise they will become useless. Clothes and ornaments may be divided by selling them (i. e. by dividing the proceeds of sale), debt consigned to writing is divided after recovering it (i. e. the bond itself is not divided), cooked food (may be divided) by exchanging it for uncooked food. The waters of wells that have flights of steps and of other wells is to be enjoyed by drawing it out according to the needs (of the co-sharers); in the same way a field or a water course is to be enjoyed according to respective shares; a single female slave is to be made to work in the houses of the co-sharers according to their shares; if there be several female slaves, they are to be allotted in equal shares (to the sharers); this very rule applies to male slaves also; the income derived from a yogakṣema grant is to be equally divided and pasture lands (or ways) are to be used by the co-sharers according to their respective shares. "

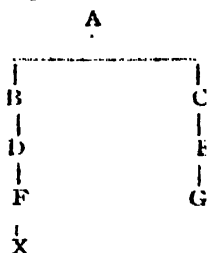
The next points to be dealt with are: what persons are entitled to partition and what is the mode of partition. But before doing so some preliminary remarks must be made on the expressions coparcenary and 'joint family', which occur at every step in modern works on Hindu Law. In the smṛtis and commentaries we come across the words *kuṭumba* (Nār., dattāpradānika 6 or Yāj. II. 175), or *avibhakta-kuṭumba* (Yāj. II. 45). A joint Hindu family consists of all males lineally descended from a common male ancestor and includes their wives and unmarried daughters. A daughter on marriage ceases to be a member of her father's

1115. वस्त्रादयोऽविभाज्या यैरुक्तं तैर्न विचारितम् । धनं भवेत् समृद्धानां वस्त्रालङ्कारसंश्रितम् ॥ मध्यस्थितमनाजीव्यं दातुं नैकस्य शक्यते । युक्त्या विभजनीयं तदन्यथानर्थकं भवेत् ॥ विक्रीय वस्त्राभरणमृणमुद्ग्राह्य लेखितम् । कृतान्नं चाकृतान्नेन परिवर्त्य विभज्यते । उद्धृत्य कूपवाप्यम्भस्त्वनुसारेण गृह्यते । तथा भागानुसारेण सेतुक्षेत्रं विभज्यते ॥ एकां स्त्रीं कारयेत्कर्म यथांशेन गृहे गृहे । बह्व्यः समांशतो देया दासानामप्ययं विधिः ॥ योगक्षेमवतं लाभः समत्वेन विभज्यते । प्रचारश्च यथांशेन कर्तव्यो रिक्थिभिः सदा ॥ बृह. q. by अपरार्क p 726, स्मृतिच. II. 277, वि. र. pp 505–506. Bṛ. generally holds Manu in the highest veneration as he says वेदार्थोपनिबद्धत्वात् प्राधान्यं तु मनुस्मृतौ । मन्वर्थविपरीता या स्मृतिः सा न प्रशस्यते ॥ (q. by अपरार्क p. 628 and कुल्लूक on मनु I. 1); but here he criticizes Manu IX. 219.

family and becomes a member of her husband's family. Under the Mitākṣarā a Hindu coparcenary strictly so called is a much narrower group than the joint family. It comprises only those males who take by birth an interest in the joint or coparcenary property i. e. a person himself and his sons, son's sons and son's grandsons form for the time being a coparcenary. The diagram and the note below[1116] will explain the limits of a coparcenary.

A coparcenary is purely a creation of law; it cannot be created by act of parties, except by adoption. In order to be able to claim a partition, it does not matter how remote from the common ancestor a person may be, provided he is not more than four degrees removed from the last male owner who has himself taken an interest by birth.[1117]

Some characteristic features of the Mitākṣarā coparcenary may be briefly stated. There is in the first place *unity of ownership* i. e. the whole body of coparceners is the owner and no individual member can say, while the family is undivided, that he has a definite share, as his interest is always fluctuating, being liable to be enlarged by deaths and diminished by births in the family. There is also unity of possession and enjoyment i. e. all are entitled to possession and enjoyment of the family

1116. Vide *Commissioner of Income Tax v. Laxminarayan* 59. Bom. 618 at p. 621.

Here all are to be assumed to be males. A and his sons B and C may form a coparcenary. So also, if B and C have each a son, then A, B, C, D, E, will form a coparcenary. If D and E have respectively F and G as sons, all persons from A to G will form a coparcenary. But here the limit is reached. If X is born during the lifetime of A, he being the son of the great-grandson of A takes no interest by birth and is outside the coparcenary during A's lifetime. But if X is born after the death of A, then he forms a coparcenary with B, D, F. Suppose that B dies before A. That will not however introduce X into the coparcenary of which A is the head, as X being the son of A's great-grandson F takes no interest by birth in ancestral property held by A. Suppose that B C D E F and G all die in the lifetime of A, then A becomes the sole surviving coparcener and X is not a coparcener along with A, because he is 5th in descent (counting both A and X) from A. Suppose A the only surviving coparcener dies. Then X will take A's property as an heir and not by survivorship as a coparcener.

1117. Vide *Moro v. Ganesh* 10 Bom. H. C. R. p. 444, pp. 461-468 where Mr. Justice Nanabhai Haridas very lucidly explains by several diagrams the limits of a coparcenary and what persons are entitled to demand a partition and from whom.

property and the possession of one is ordinarily possession on behalf of all. Further, while the family is joint and some coparceners have many children and others have few or none or some are absent, they cannot complain at the time of partition about some coparceners having exhausted the whole income and cannot ask for an account of past income and expenditure. Kāt. (888) expressly states so.[1118] Moreover, the joint family property devolves by survivorship i. e. on the death of a coparcener his interest lapses and goes to the other coparceners, subject to this that if the deceased has left a son, grandson, or great-grandson, the latter represents and occupies the place of the deceased coparcener when a partition takes place. A female cannot be a coparcener (even if she be the wife or the mother). Another characteristic is that each coparcener has a right to enforce a partition. The affairs of the family are managed by the father and if he be very old or dead, by the senior brother or member or by any other member with the consent of the senior member (Nār., dāyabhāga 5 and Śaṅkha quoted above in note 1067). The manager is called *kartā* in modern times though the smṛtis and digests employ words like *kuṭumbin* (Yāj. II. 45), *gṛhin*, *gṛhapati*, *prabhu* (Kāt. 543) and not *kartā*. He has special powers of disposition (by mortgage, sale or gift) of family property in a season of distress (for debts), for the purposes and benefit of the family (maintenance, education and marriages of members and other dependents) and particularly for religious purposes (śrāddhas and the like).[1119] The father has the same powers as manager and certain other special powers, which no other coparcener has. The father can separate his sons from himself and also among themselves if he so desires, even if they do not desire to separate[1120] (Yāj. II. 114); while an ordinary

1118. बन्धुनापहृतं द्रव्यं बलान्नैव प्रदापयेत्। बन्धूनामविभक्तानां भोगं नैव प्रदापयेत्॥ कात्या. q. by दायभाग XIII. 7 p 222, वि. र, p. 526. The दायभाग explains 'सामादिना दाप्यो न बलात् अविभक्तेन तु यदधिकं भुक्तं तदसौ न दाप्यः' and वि. र, 'तद्विभागकाले नासावधिकोपभोक्ता च भोगं दापयितव्य इत्यर्थः' The दायतत्त्व p. 183 says 'अत्रापहृतपदं भाक्तम्'.

1119. एकोपि स्थावरे कुर्याद्दानाधमनविक्रयम्। आपत्काले कुटुम्बार्थे धर्मार्थे च विशेषतः॥ इति। अस्यार्थः। अप्राप्तव्यवहारेषु पुत्रेषु पौत्रेषु बाह्यज्ञादानादावसमर्थेषु भ्रातृषु वा तथाविधेष्वविभक्तेष्वपि सकलकुटुम्बव्यापिन्यामापदि तत्पोषणे चावश्यकर्तव्येषु च पितृश्राद्धादिषु स्थावरस्य दानाधमनविक्रयमेकोपि समर्थः कुर्यात्। इति। मिता. on या. II. 114. The verse एकोपि is ascribed to व्यास by व्यव. नि. p. 411.

1120. This power of the father has been recognized even in modern times. Vide *Kandasami v. Doraisami* 2 Mad. 317, 321–322, *Nirman v. Fateh* 52 All. 178. But it has been held that the grandfather has no power to separate his grandsons *inter se*. Vide A. I. R. (1945) Mad. 327.

coparcener can only separate himself from the family. The father can make within reasonable limits gifts of ancestral movable property without[1121] the consent of his sons for performing indispensable acts of duty and for purposes laid down by the texts, such as gifts through affection (to wife, daughter, son or the like), the support of the family and relief from distress. The father can make a gift of even immovable property within[1122] reasonable limits for pious purposes only (such as to a family idol or to an idol in a temple at the time of obsequies). The father can sell or mortgage the joint family property to pay off an antecedent debt contracted by him for his own personal benefit, provided it is not illegal or immoral (vide p. 448 above). No coparcener (except the father or manager as stated above) can dispose of his undivided interest by gift, sale or mortgage according to the strict theory of the Mitākṣarā except with the consent of the other coparceners. This right to object to alienations made without consent or made without legal necessity is another characteristic of the joint Hindu family under the Mitākṣarā. Bṛ. (S. B. E. 33 p. 384 verse 93) says[1123] "whether kinsmen are joint or separate they are alike as regards immovable property, since a single one from among them has no power in any case to make a gift, sale or mortgage of it." But in modern times the courts in Bombay, Madras and the Central Provinces have loosened this strict rule by holding that

1121. मणिमुक्ताप्रवालानां सर्वस्यैव पिता प्रभुः । स्थावरस्य तु सर्वस्य न पिता न पितामहः ॥ पितृप्रसादाद् भुज्यन्ते वस्त्राण्याभरणानि च । स्थावरं तु न भुज्येत प्रसादे सति पैतृके ॥ both quoted by the मिता. on या. II. 114, परा. मा. III.484, (the first) by दायभाग II. 22 p. 33 (attributing it to या.) and the first is ascribed to व्यास by व्यव. नि. p. 411 and to विष्णु by चित्राकृताण्डव folio 100. Vide note 1033 above.

1122. Vide *Ramalinga v. Sivachidambara* 42 Mad. 440, *Gangi Reddi v. Tammi Reddi* 54 I. A. 136, 140, *Sri Thakurji v. Nanda* 43 All. 560 for the validity of gifts of small immovable property by the *kartā* for religious purposes. But in *Jinnappa v. Chimmava* 59 Bom. 459 a gift of a small portion of joint family immovable property by the father to his daughter on the ground that she looked after him in his old age was set aside at the suit of his grandsons.

1123. यत्तु बृहस्पतिवचनं–अविभक्ता विभक्ता वा सपिण्डाः स्थावरे समाः । एको ह्यनीशः सर्वत्र दानाधमनविक्रये–इति तदपि अविभक्तेषु द्रव्यस्य मध्यस्थत्वादेकस्यानीश्वरत्वात्सर्वाभ्यनुज्ञानश्यं कार्या । विभक्तेषूत्तरकाले विभक्ताविभक्तसंशयव्युदासेन व्यवहारसौकर्याय सर्वाभ्यनुज्ञा न पुनरेकस्यानीश्वरत्वेनातो विभक्तानुमतिव्यतिरेकेणापि व्यवहारः सिध्यत्येवेति व्याख्येयम् । मिता. on या. II. 114. The स्मृतिच. II. p. 309, the व्य. म. p. 136 and some others read दायादाः for सपिण्डाः; दायभाग II. 27 p. 34 reads विभक्ता अविभक्ता वा सपिण्डाः and attributes it to व्यास; अपरार्क p. 757 attributes विभक्ता वाविभक्ता वा to कात्या.

a coparcener may sell, mortgage or alienate for *value* his undivided interest in coparcenary property without the consent of the other coparceners[1124] and the courts have allowed the undivided interest of a coparcener in joint family property to be attached at the instance of a creditor for the individual debts of a coparcener. This is one of the most serious departures from ancient and medieval Hindu Law made by the Courts on the ground of equity. One more right of all members of the joint Hindu family is the right to be maintained from the property and income of the joint family. Such matters as the remedies of the purchaser or mortgagee from an individual coparcener are here left out of consideration as appropriate only in a treatise on modern Hindu Law.

The conception of a coparcenary under the Dāyabhāga system is entirely different from that of the Mitākṣarā. Under the Dāyabhāga, sons do not acquire any interest by birth in ancestral property, but the son's rights arise for the first time on the father's death and the sons take as heirs and not by survivorship. There is hence no coparcenary in the sense of the Mitākṣarā between a father and his sons. The father has absolute power to dispose of all kinds of ancestral property by sale, mortgage, gift, will or otherwise in the same way as he can dispose of his separate property. The son has no right to demand a partition during his father's lifetime. A coparcenary starts on the death of the father between the latter's sons or grandsons i. e. between brothers, uncles and nephews, or between cousins. If a coparcener dies without male issue, there is no right of survivorship in the other coparceners but the deceased member's widow or daughter may succeed to his share and thus even females may become members of a coparcenary under the Dāyabhāga. Each coparcener takes a defined share under the Dāyabhāga (not an indefinite one as under the Mitākṣarā). Any coparcener under the Dāyabhāga can sell, mortgage, or dispose off by gift or will his share (Dāyabhāga II. 28-31).[1125]

1124. Numerous cases lay down this proposition ; vide, for example, *Vasudeva v. Venkatesh* 10 Bom. H. C. R. p. 139 which was approved of by the Full Bench in *Fakirappa v. Chanapa* 10 Bom. H. C. R. p. 162, *Vitla Butten v. Yamenamma* 8 Mad. H. C. R. 6.

1125. On विभक्ता ... एको ह्यनीशः etc. the दायभाग (II. 28-30 p. 34-35) remarks ' व्यासवचनं तु स्वामित्वेन दुर्वृत्तपुरुषस्थावरविक्रयदानादिना कुटुम्बविरोधादधर्मभागिताज्ञापनार्थं निषेधरूपं न तु विक्रयाद्यनिष्पत्त्यर्थम्। एवं च स्थावरं द्विपदं ... विक्रयः— इत्येवमादिकं तद्रूपेणैव वर्णनीयम्। ...तेन दानविक्रयकर्तव्यतानिषेधात् तत्करणात् विधयतिक्रमो भवति न तु दानाद्यनिष्पत्तिः। वचनशतेनापि वस्तुनोऽन्यथाकरणाशक्तेः।

Every coparcener is entitled to a share on partition. It has been already stated (on pp. 570–571) how in Bombay a son is not entitled to a partition if the father is *joint* with his own father, brothers or other coparceners and does not assent to the son's claim. There is a volume of case-law about a suit for partition brought on behalf of a minor, but it has to be passed over here, as there is hardly anything corresponding to this in the works on dharmaśāstra. The texts provide for the case of a son who was in the mother's womb at the time of partition but was born after it. If A and his sons B and C, who are members of a joint family, come to a partition and take one third each of the family property and six months later A's wife gives birth to a son D, then the partition has to be reopened and D will get ¼ (⅕ if the mother is given a share) of the family property that will remain after meeting all proper charges since the first partition and taking into account all income and accretions during the interval. The same rule applies to a partition among brothers, when the widow of a predeceased brother gives birth to a posthumous son conceived before the partition but born after it. Vide Yāj.[1126] II. 122 and Viṣṇu Dh. S. 17. 3. Vasiṣṭha (17. 40–41) therefore recommends that when it is known that the wives of some brothers (predeceased) are pregnant the other brothers should postpone partition till the delivery of those women. Where a son is born as well as conceived after partition between a father and his sons the rights of the afterborn son are declared by Gaut.[1127] 28. 27, Manu IX. 216, Yāj. II. 122,[1128] Nār. (dāyabhāga 44), Bṛ. (S. B. E. 33 p. 372 verses 17 and 19) that he takes the share allotted to the father and also all the self-

1126. पितृविभक्ता विभागानन्तरोत्पन्नस्य भागं दद्युः । विष्णुधर्मसूत्र 17. 3 ; दृश्याद्वा तद्विभागः स्यादायव्ययविशोधितात् । या. II. 122, on which the मिता. remarks 'एतच्च विभागसमयेऽप्रजस्य भ्रातुर्भार्यायामस्पष्टगर्भायां विभागादूर्ध्वमुत्पन्नस्यापि वेदितव्यम् । स्पष्टगर्भायां तु प्रसवं प्रतीक्ष्य विभागः कर्तव्यः । यथाह वसिष्ठः । अथ भ्रातॄणां दायविभागः । याश्चानपत्याः स्त्रियस्तासामा पुत्रलाभात् । इति ।'

1127. विभक्तजः पित्र्यमेव । गौ. 28. 27 ; पुत्रैः सह विभक्तेन पित्रा यत्स्वयमर्जितम् । विभक्तजस्य तत्सर्वमनीशाः पूर्वजाः स्मृताः ॥ बृहस्पति q. by मिता. on या. II. 122, हरदत्त on गौ. 28. 27, स्मृतिच. II. p. 307, दायभाग VII, 6 p. 131, व्य. म. p. 104.

1128. There is great divergence among commentators about Yāj. II. 122 विभक्तेषु सुतो जातः सवर्णायां विभागभाक् । दृश्याद्वा तद्विभागः स्यादायव्ययविशोधितात् ॥.

acquisitions of the father made after the partition.[1129] The Mit. understands that the first half (of Yāj. II. 122) refers to a partition during the father's lifetime and provides that if a son was conceived and born to the father after partition he took the share allotted to the father and all the self-acquisitions of the father made after partition (*tathā vibhāgottarakālam pitrā yat kiñcit arjitam tat sarvam vibhaktajasyaiva*) and the Mit. relies on Manu IX. 216 and Br. for this. The Mit. takes the 2nd half of Yāj. II. 122 as referring to a partition made after the father's death and states that, if a son was in the mother's womb when the brothers separated after the father's death and was born subsequently, the posthumous son would be entitled to reopen the partition and would get a share out of the property (not as it stood at the date of partition) that would be there after allowing for proper expenditure (e. g. payment of debts etc.) and accretions. The Mit. extends the same rule to a posthumous son born after partition to the widow of a brother who died before the partition and

1129. In *Nawal Singh v. Bhagwan Singh* 4 All. 427, where after the father separated from his three sons he married a second wife, had a son from her and died leaving certain property inherited by him from a third person, it was held, relying on Manu, the Mit., Br. and the Vīramitrodaya, that the son born after partition was entitled to the whole of the property acquired by the father to the exclusion of the three sons that had separated from him. In *Chengama v. Munisami* 20 Mad. 75 (where a father partitioned his ancestral property half and half between his two sons, reserved no share for himself and subsequently another son was born to him) it was held that the subsequently born son was entitled to one-third by partition not only in the property as it stood at the date of partition, but also in the property acquired by the two sons by means of the produce of that property (relying on the words of Yāj. II. 122 "*āyavyayaviśodhitāt*"). The dates of the partition and of the birth of the son are not clear from the report. In *Ganpat v. Gopalrao* 23 Bom. 636 (where in 1875 a father separated his son born of his first wife by giving him one third of the estate and gave two thirds to his two minor sons from the second wife and lived with them and another son was born to him in 1880, who sued in 1894 claiming one-fourth of all property) it was held that the one third given to the son by the first wife could not be affected and the plaintiff was only entitled to claim a share in the property given to the other two sons, and further that the texts of Viṣṇu and Yājñavalkya are somewhat vague and are applicable only to the case of posthumous sons who have no provision made for them. Vide also *Shivajirao v. Vasantrao* 33 Bom. 267 for further limitations on this rule in favour of the after-born son.

when the fact of the pregnancy was not known to the separating brothers. Viśvarūpa regards the whole verse as laying down one proposition, the first half declaring that if a son (who had been already conceived) were born to the father after partition with the sons, he would be entitled to the share taken by the father, while the 2nd half declares that if the father took no share then the son so born would be entitled to reopen the partition and take a share of the property remaining after taking into account accretions and expenses. The Dīpakalikā seems to be of the same opinion as Viśvarūpa, but it adds that Manu IX. 216 provides for the case where the son is both conceived and born after partition. The Sm. C. (II. pp. 306-307) holds that when in the father's lifetime partition takes place the sons separating should give a share to the after-born son, but the father should retain his, while the whole of Yāj. II. 122 applies to the case where partition is made after the father's death and a posthumous son is born to the mother or to the widow of a brother dying before partition. In such a case the partition should be reopened and a share given out of the property as it stood at the first partition or out of the property as found to exist at the reopened partition after allowing for accretions and proper expenses (for payment of debts, for saṁskāras of brothers and sisters); vide V. P. p. 463 for explanation of 'dṛśyād' etc. The Vyavahāra-mayūkha (p. 105) follows the Sm. C. and V. R. (p. 539) in explaining the whole of Yāj II. 122 as referring to the case of a posthumous son conceived before partition made on the father's death but born after partition from the mother or step-mother of the separating brothers or from the wife of a brother dying before partition.

An adopted son, if adopted by a coparcener in a joint family or by a sole surviving coparcener, becomes under the Mitākṣarā law a member of the coparcenary from the moment of his adoption and has the same rights to demand a partition as an *aurasa* son has. Under the Dāyabhāga even an aurasa son cannot claim partition during his father's life and so an adopted son would be in no better position. If after a person adopts he has an aurasa son, the adopted son's share becomes reduced according to most commentators, but this subject will be dealt with later on under adoption.

The smṛtis and some of the medieval and later digests even enter into elaborate discussions about the rights of a son or sons born from wives of classes lower than that of the father. Vide

Gaut. 28. 33–37, Baud. Dh. S. II. 2. 10, Kauṭ. III. 6, Vas. 17. 48–50, Manu IX. 149–155, Yāj. II. 125, Viṣṇu Dh. S. 18. 1–33, Nār. (dāyabhāga 14), Bṛ. (S. B. E. 33 p. 374 verses 27–29), Śaṅkha (quoted in V. R. p. 531). It is not necessary to deal in detail with the varying provisions made in these works, as marriages with women of a lower class have not been in vogue for several centuries; but a few remarks will have to be made. Manu IX. 153 and Yāj. II. 125, Bṛ. (S. B. E. 33 p. 374 v. 27) clearly state that if a brāhmaṇa has sons from wives of the four classes, the whole property should be divided into ten parts which should be distributed as follows:—four for the son of the wife of the brāhmaṇa caste, three for the son of the kṣatriya caste wife, two for the son of the vaiśya caste wife and one for the son of the śūdra class wife. Manu IX. 154 (almost the same as Anuśāsana 47. 21) further provides that whether a brāhmaṇa leaves sons or no sons born (of wives of the three twice-born classes) the heir shall give, according to the law, to the son of a śūdra class wife no more than a tenth part of his estate. V. P. p. 487 and the Mit. (on Yāj. II. 133) after quoting Manu, make this quite clear. But as remarked by the Mit. on Yāj. II. 125 the son of a brāhmaṇa from a wife of the kṣatriya or other lower class was not to share in land obtained by the brāhmaṇa by way of gift (vide Bṛ. quoted in note 1106 above) though he could share land acquired by purchase or the like. A verse (attributed to Bṛ. by Dāy. IX. 22 and V. R. p. 534 and to Devala by V. P. p. 466) denies altogether a share in land to a śūdra class wife's son of a brāhmaṇa, while Manu IX. 155 (the son of a person of the three higher classes from a śūdra woman gets no share in the paternal wealth) is variously explained, the Mit. saying that it applies only where the son has already got some property from his father while the Mayūkha and some others say that it applies to the son of a śūdra woman who is not married to the person of higher caste but is only a mistress. Kauṭ. III. 6 and Bṛ. (quoted by V. R. p. 534) provide that the *pāraśava* son gets ⅓ of his father's estate and the nearest sapiṇḍa gets the remaining two thirds. Śaṅkha-Likhita (quoted by Medhātithi on Manu. IX. 155) have the same rule as in Manu IX. 155. It is remarkable that early medieval writers like Vijñāneśvara (about 1100 A. D.) or even later ones like Mitramiśra (first half of 17th century) in V. P. pp 464–466 enter with zest into elaborate explanations of Manu IX. 153 and Yāj. II. 125 and never expressly state that these verses had ceased to be applicable in their days, though there

are a few other medieval works like the Sm. C. II. pp. 288-289 and the Madanaratna[1130] that either do not explain these verses at all or say that these verses are applicable to a different age. According to Manu (IX. 178, 160) the son of a brāhmaṇa from a śūdra class wife is called śaudra or pāraśava, while according to Yāj. I. 91 he is called both niṣāda and pāraśava (vide H. of Dh. vol. II. pp. 86-87 for niṣāda and pāraśava). But he is one of the secondary sons (*gauṇa-putra*) according to Manu (IX. 180), Vas. 17. 38 and others. Writers from Aparārka downwards quote certain[1131] verses from Śaunaka on matters forbidden in the Kali age (*kali-varjya*) one of which is the acceptance of sons other than aurasa and dattaka.[1132]

1130. असवर्णेषु पुत्रेषु गुणवत्त्वनिर्गुणत्वाविकृतो यो विशेषः स कन्यानामसवर्णानां विवाहश्च द्विजन्मभिः-इति आदिपुराणे कलिवर्ज्यप्रकरणे असवर्णापरिणयस्य निषेधात् सांप्रतं मूर्धावसिक्तादीनां प्रचाराभावेन नेह प्रपञ्चितः। समयनिर्णयोद्द्योते कलिवर्ज्यप्रकरणेऽस्माभिरुदाहृतेन दत्तौरसेतरेषां तु पुत्रत्वेन परिग्रहः-इति वचनेन कलौ युगे दत्तौरसपुत्रिकापुत्रव्यतिरिक्तानां क्षेत्रजादीनां गौणपुत्राणां निषेधात् सांप्रतं तेषां प्रचाराभावेन तद्विभागविषयविशेषो नात्र निरूप्यते। मदनरत्न (folio 93a); अत एवास्माभिरसवर्णपुत्राणां दत्तकेतरेषां गौणपुत्राणां पुत्रिकायास्तत्सुतस्य च भागविधयो न निबध्यन्ते। संप्रत्यननुष्ठीयमानत्वाद् वृथा च ग्रन्थविस्तारापत्तेः। स्मृतिच. II. p. 289.

1131. अत एव कलौ निवर्तन्ते इत्यनुवृत्तौ शौनकेनोक्तं दत्तौरसेतरेषां तु पुत्रत्वेन परिग्रह इति। अपरार्क p. 739. Vide also परा. मा. I. 2. p. 97, व्यवहारमयूख p. 107 (अत्र दत्तकभिन्ना गौणाः पुत्राः कलौ वर्ज्याः। दत्तौरसेतरेषां तु पुत्रत्वेन परिग्रह इति तन्निषेधेषु पाठात्).

1132. In *Natha v. Chotalal* 55 Bom. 1 the son of a brāhmaṇa from a śūdra wife was held entitled to a tenth share in the estate of his father and uncle and that the remaining nine-tenths would go to the nearest agnate, and Manu and Yāj. are relied upon. But this would be opposed to the view of the Mayūkha that secondary sons are not allowed now and is also against the spirit of the warning given by the Privy Council to Judges of modern times over 75 years ago in *Collector of Madura v. Mootoo Ramlinga* 12 Moo. I. A. 397 at p. 436 "the duty of an European Judge who is under an obligation to administer Hindu Law is not so much to inquire whether a disputed doctrine is fairly deducible from the earliest authorities, as to ascertain whether it has been received by the particular school which governs the district with which he has to deal and has there been sanctioned by usage. For *under the Hindu system of law, clear proof of usage will outweigh the written text of the law.*' This passage (omitting the word "European") is quoted by the P. C. in *Atmaram v. Bajirao* 62 I. A. 139 where it is further held that in a conflict between smṛti texts and commentators the opinion of the latter prevails in the provinces where their authority is recognized. *Natha v. Chotalal* 55 Bom. 1 purports to follow *Bai Gulab v. Jivanlal* 46 Bom. 871. In both cases the parties came from

(*Continued on the next page*)

An illegitimate son has in certain circumstances rights of partition in the property of his putative father. An illegitimate son may be a son by a concubine who is a *dāsī* (i. e. who is in exclusive and continuous keeping) or he may be the son of a woman who is not a *dāsī*. The first is called *dāsīputra*[1133] and the second is hardly ever dealt with in dharmaśāstra works.[1134]

(*Continued from the last page*)

Gujerat where the Vyavahāramayūkha is of paramount authority. In both cases not a word is said about the proof of the usage of marriages between a brāhmaṇa and a śūdra woman taking place in Gujerat but reliance is placed solely on the recognition of *anuloma* marriages by Manu and Yājñavalkya, the strong condemnation of pratiloma marriages by both and the inference drawn from the comment of Vijñāneśvara and the remarks of Nilakaṇṭha that anuloma marriages are not prohibited. With the most profound respect for the learned Judges who decided those two cases, it has to be said that they took up the position of legislators and did not merely interpret the Hindu Law in accordance with usage and ignored the text of the Mayūkha itself stating that all secondary sons (among which the son of a brāhmaṇa from a śūdra caste wife is included by Manu) except aurasa son (who is defined by Yāj. II. 128 himself and the Mit. as the son of a *wife of the same class*) and dattaka are forbidden in the present age. The decision in *Bai Gulab v. Jivanlal* was opposed to the considered view expressed by Chandavarkar J. in *Bai Kashi v. Jamnadas*, 14 Bom. L. R. 547 at p. 552 "From this gloss of the Mitākṣarā from which Nilakaṇṭha expressed nowhere any dissent it is reasonable to infer that, according to the leading authorities on Hindu Law as recognised in this Presidency, a shudra wife is not permitted to a brahmin, a kshatriya or a vaishya" and to the decisions of some other High Courts in India (vide 28 All. 458 for example). It should not be supposed that the present writer is entirely against such marriages. What he is concerned to emphasize is that the Legislature should deal with these matters, that Judges should not assume the role of legislators and give rise to conflict of laws which are inevitable if the same kind of marriage is held valid by the Bombay High Court and invalid by the Allahabad or Madras High Court.

1133. Dāsīputra occurs in the story of Kavaṣa Ailūṣa in the Aitareya and Sāṅkhāyana Brāhmaṇas. 'माध्यमाः सरस्वत्यां सत्रमासत तद्धापि कवषो मध्ये निषसाद तं हेमे उपोदुर्दास्या वै त्वं पुत्रोऽसि न वयं त्वया सह भक्षयिष्याम इति'। शां. ब्रा. XII. 3; ऋषयो वै सरस्वत्यां सत्रमासत ते कवषमैलूषं सोमादनयन्दास्याः पुत्रः कितवोऽब्राह्मणः कथं नो मध्येऽदीक्षिष्टेति। ऐ. ब्रा. 8. 1. Vide note 925 for śūdrāputra in the Tāṇḍya Br. 14. 6. 6.

1134. Yāj. II. 290 appears to distinguish between a dāsī in general and one who is *avaruddhā* (in the exclusive and continuous keeping of a man) "अवरुद्धासु दासीषु भुजिष्यासु तथैव च। गम्यास्वपि पुमान्दाप्यः पञ्चाशत्पणिकं दमम्" For the com. of the Mit. vide n. 1595 below.

From ancient times it had been settled that the dāsīputra of a person belonging to the twice-born classes is not entitled to a share on partition or to inherit, but is entitled to maintenance only. Gaut. 28. 37 provides[1135] that even the son of a brāhmaṇa who is issueless from a śūdra woman (a concubine) should receive the means of maintenance provided he is obedient in the manner of a pupil. Bṛ. (S. B. E. vol. 33 p. 374 verse 31) contains a similar rule for the maintenance of an illegitimate son born of a śūdra woman after the father's death. But as regards the son of a śūdra from a *dāsī* Manu IX. 179 provides that such an illegitimate son may take a share in the father's property if the father allows him to do so. The classical passage on the rights of the illegitimate son of a śūdra from a dāsī is Yāj. II. 133–134 which verses are introduced by the V. Mayūkha[1136] with the words "Yāj. declares a special rule as regards one begotten by a śūdra on a woman (of the same caste) not married to him" and which may be rendered thus "even a son begotten by a śūdra on a dāsī may partake of a share at the choice (of his father). But, when the father is dead, the brothers should make him the recipient of a half share". This passage and the comments of the Mit., the V. Mayūkha, the Dāyabhāga have been cited and explained in numerous cases. The following propositions as deduced from the texts and the case-law may be set out here:—(1) the illegitimate son of a śūdra even under the Mit. does not acquire by birth any interest in the estate held by the father and so cannot enforce a partition in his father's lifetime, but the father may give him a share in his lifetime, which may even be equal to that of a legitimate son (4 Bom. 37, 44–45, 23 Mad. 16); (2) on the father's death an illegitimate son of a deceased śūdra

1135. शूद्रापुत्रोऽप्यनपत्यस्य शुश्रूषुश्चेल्लभेत वृत्तिमूलमन्तेवासिविधिना । गौ. 28. 37 ; अनपत्यस्य शुश्रूषुर्गुणवाञ्शूद्रयोनिजः । लभेत जीवनं शेषं सपिण्डाः समवाप्नुयुः ॥ बृह. q. by दायभाग IX. 28 p. 141, व्यव. नि. p. 430.

1136. शूद्रेणापरिणीतायामुत्पन्ने विशेषमाह याज्ञवल्क्यः । जातोपि दास्यां शूद्रेण कामतोंशहरो भवेत् । मृते पितरि कुर्युस्तं भ्रातरस्त्वर्धभागिकम् । अभ्रातृको हरेत्सर्वं दुहितॄणां सुताद्वृते ॥ व्य. मयूख pp. 103–104 ; अत्र च शूद्रग्रहणाद् द्विजातिना दास्यामुत्पन्नः पितुरिच्छयाप्यंशं न लभते नाप्यर्धं कुत एव कृत्स्नम् । किन्त्वनुकूलश्चेज्जीवनमात्रं लभते । मिता. ; विश्वरूप quotes a prose text of Bṛhaspati to the same effect 'यथाह बृहस्पतिः' कामतश्च शूद्रावरोधजस्य भ्रातुरंशं संमानमात्रं मेते पितरि दद्युः शुश्रूषुश्चेत् । इति. In *Rahi v. Govind* 1 Bom. 97 at p. 113 and in other cases the word 'apariṇītāyām' in the V. Mayūkha has been wrongly translated as meaning 'an unmarried woman', when it really means 'a woman not married (to the śūdra)'.

becomes a coparcener along with the legitimate sons and the former is entitled to seek partition (4 Bom. 37 F. B.); (3) on a partition the illegitimate son takes only one half of what he would have taken[1137] if he were a legitimate son i. e. if there be one legitimate and one illegitimate son, the latter would take one-fourth and the former three-fourths; (4) if no partition takes place and the legitimate son or sons all die without partition, the illegitimate son would take the whole as the last survivor of the coparcenary (L. R. 17. I. A. 128); (5) if there be no legitimate sons, grandsons, or great-grandsons of the śūdra father, the illegitimate son takes the whole estate;[1138] (6) as the text of Yāj. refers only to a son, an illegitimate daughter is not entitled to any inheritance or even to maintenance (32 Bom. 562); (7) if the śūdra father be joint with his collaterals such as brothers, uncles or nephews, the illegitimate

1137. The decisions establish that *dāsī* is not to be taken in the strict literal sense (a female slave), but means a woman kept as a concubine, the connection being continuous, exclusive and lawful. In order that the illegitimate son of a śūdra may take a share or inherit, it must be shown that the connection between the śūdra man and the woman was not incestuous or adulterous or though adulterous at the beginning had ceased to be so when the illegitimate son was born. Vide *Rahi v. Govind* 1 Bom. 97 at p. 110, *Sadu v. Baiza* 4 Bom. 37 (F. B.) at p. 44, *Vithabai v. Pandu* 28 Bom. L. R. 595, *Soundararajan v. Arunachalam* 39 Mad. 136 (F. B.) pp. 152–159, *Tukaram v. Dinkar* 33 Bom. L. R. 289. But even the son of an adulterous intercourse has been held entitled to maintenance (1 Mad. 306, 34 Mad, 68, 47 Bom. L. R. 5 F. B.). The earlier cases in Calcutta (as in 1 Cal. 1, 19 Cal. 91, 28 Cal. 194), held that dāsī meant only a female slave and as slavery was abolished in India, there could be no *dāsīputra* strictly so called. But in *Rajaninath v. Nitai* 48 Cal. 643 (F. B.) the former Calcutta decisions were overruled and the Bombay High Court's interpretation of dāsiputra has been accepted. The passage of the Dāyabhāga (IX. 29 p. 143) which was to be correctly interpreted in the Calcutta cases runs "शूद्रस्य पुनरपरिणीतादास्यादिशूद्रापुत्रः पितुरनुमत्या पुत्रान्तरतुल्यांशहरः। तदाह मनुः। दास्यां वा० (मनु IX. 179) । अनुमतिमन्तरेण स्वर्धांशहरः । तदाह याज्ञवल्क्यः । जातोपि० (या. II. 133–34). The Dāy. passage is quoted on pp. 680 and 723 of 48 Cal. 643 (F. B.).

1138. अत्र बहुवचनात्सर्वे स्वस्वभागादर्धं दद्युरिति न भ्रमितव्यम् । तथा सति बहुभ्रातृकस्य ततोऽप्यतिबहुधनस्वापत्तेरव्यवस्था स्यात् । किं त्वेकपुत्रस्य यावान्भागस्तदर्धभागं शूद्रापुत्रा लभन्ते । ... परिणीतशूद्रापुत्रतत्पुत्राद्यभावे तु दासीपुत्रोऽपि कृत्स्नं शूद्रस्य पितुर्धनं लभत इत्यर्थाद् गम्यते । व्य. म pp. 487–488. विश्वरूप on या. II. 138 (Tri. edition) quotes the view of some expressed by बृहस्पति in a prose aphorism according to which the illegitimate son succeeds, when there is no legitimate son, grandson or great-grandson, to the whole estate with the king's permission; 'अनन्वयिनः सर्वं राजा हरेत् तदनुज्ञया वावरोधज इत्येके',

son cannot demand a partition of the joint family property though he is entitled to maintenance as a member of the family provided the father left no separate estate (L. R. 58 I. A. 402). It has been held that if a śūdra keeps a woman of the brāhmaṇa caste as his exclusive mistress and has a son from her, he is not a dāsīputra (but acc. ancient works a cāṇḍāla) and is not entitled to inherit the estate the śūdra father as an illegitimate son. Vide *Ramchandra v. Hanamnaik* 37 Bom. L. R. 920 followed in 18 Lucknow 585. Further rules about the inheritance of the illegitimate son when in competition with the widow, legitimate daughter or legitimate daughter's son will be dealt with later on (vide n. 1356 below).

An absent coparcener stood on the same footing as a minor (vide note 1077 above); in modern times he would be subject to the law of Limitation (Articles 127 and 144 of the Indian Limitation Act of 1908).

The wife cannot herself demand a partition, but if the husband himself separates his sons during his lifetime or if the sons claim a partition during the father's lifetime, the wife was entitled to a share equal to that of a son, according to Yāj. II. 115. If there be several wives each gets a share equal to that of a son. There is a proviso that the wife or wives must not be in possession of *strīdhana* property given by the husband or by the father-in-law and that if there is strīdhana, then only as much more will be allotted to her as will make her share equal to that of a son (as stated in Yāj. II. 148). The Mit. on Yāj. II. 52 states that at the husband's will the wife also gets a share of the family wealth but not by her own will[1139]. The Madanaratna explains that the meaning[1140] is simply this that the

1139. तस्माद्भर्तुरिच्छया भार्याया अपि द्रव्यविभागो भवत्येव न स्वेच्छया । यथा वक्ष्यति यदि कुर्यात् ... इति । मिता. on या. II. 52.

1140. पत्न्य इति बहुवचनात्सर्वपत्नि स्वांशेन समानमंशं गृह्णीयात्र तु ताभ्यः पृथक्कृत्यांशो देयः । जायापत्योर्न विभागो विद्यते इति हारीतवचनविरोधापत्तेः । मदनरत्न (ms. folio 91 b). It is curious that the मदनरत्न ascribes जायापत्योर्न विभागो विद्यते to हारीत, this sūtra is आप. ध. सू. II. 6. 14. 16; vide above p. 451 and H. of Dh. vol. II. pp. 429 and 518 for quotation from Āp. and p. 556 for a verse from Tai. Br. quoted in Mit. on या. II. 52 about husband and wife enjoying together in heaven the rewards of religious acts. नात्र जायापत्योर्विभाग उच्यते येन हारीतवचनविरोधः स्यात् । किं तु पत्यैव पुत्रविभागसमये ताभ्यस्तत्समांशदानं प्रीतिदानवत् । व्य. प्र. pp. 441-442. It is worthy of note that the व्य. प्र. p. 510 elsewhere

(*Continued on the next page*)

father when separating from the sons should take for each of his wives a share equal to that of each son, but it is not meant that the husband is to carve out separate portions of the joint property and hand them over to his wives, since such a procedure would be opposed to the *dictum* "there is no partition between husband and wife". The V. P. (pp. 441-42) after quoting this view of the Madanaratna refutes it by saying that Yāj. is not here speaking of the partition between husband and wife but between the father and sons and that the husband assigns to the wife a share as he may give a gift of affection to his wife. It deserves to be noted that the ancient commentator Viśvarūpa (on Yāj. II. 119 of Tri. edition) anticipates modern legislation as he states that the widows of pre-deceased sons and grandsons also should be given the shares that would have been taken by their husbands if living along with his own wives by the father at the time of partition with his sons. Recently by the Hindu Women's Rights to Property Act (Act XVIII of 1937 as amended by Act XI of 1938), it is provided that when after the Act comes into force a Hindu governed by the Dāyabhāga School dies intestate or where a Hindu governed by any other school dies living separate property, his widow will be entitled to the same share as that of a son and the widow of a pre-deceased son or grandson shall inherit in the same manner as a son or grandson and further where a Hindu governed by any school other than the Dāyabhāga dies having an interest in joint family property his widow will succeed to a Hindu widow's estate as regards the interest he himself had. This last provision brings the law of the Mitākṣarā into line with that of the Dāyabhāga and makes the widow of a deceased coparcener a member of the coparcenary and at one stroke does away with the fundamental doctrine of the Mit. about

(*Continued from the last page*)

refers the sūtras जायापत्योर्न विभागो विद्यते पाणिग्रहणाद्धि सहत्वं कर्मसु to गौतम. It further says that the wife's ownership in the husband's property is only technical and not real and that when the husband dies and his ownership in joint family estate lapses her technical ownership comes to an end 'पाणिग्रहणाद्धि ... ... ग्रहेषु चेति गौतमवचनात्पत्न्या अपि तत्रागेऽविविक्तेऽपि स्वत्वमुत्पन्नं तन्नाशः किमिति तत्स्वत्वे कल्प्यत इति चेन्न । औपपत्तिकोऽस्ति न तु तात्त्विकः । पत्न्याः पतिद्रव्ये स्वत्वं नीरक्षीरवदेकलोलीभावापन्नं सहाधिकारिकर्मोपयोगि न तु भ्रातृणामिव परस्परम् ।' व्य. म. p. 510 ; समांशदानपक्षे प्रमीतभर्तृकाः पुत्रपौत्रपत्न्यः स्वपत्न्यश्च भर्तृभागार्हाः कार्याः । विश्वरूप on या. II. 119.

male coparceners alone taking by survivorship joint family property.[1141]

The mother (or step-mother) also, when the sons come to a partition after the father's death, is entitled to a share equal to that of a son in the coparcenary property.[1141a] But she cannot compel a partition so long as the sons choose to remain joint. But her share is liable to be reduced on account of her possession of strīdhana as in the case of the wife. Vide Yāj. II. 123, Viṣṇu Dh. S. 18. 34 and Nār. (dāyabhāga, 12). The Mit. (on Yāj. II. 135) combats the view of some predecessors that the mother does not take a share but only as much wealth as would be necessary for her maintenance, by relying on the words "equal share" occurring in Yāj., Viṣṇu, and Nār. which would be meaningless on that view. It also refutes another view that the mother takes an equal share with the sons when the ancestral property is small, while she takes only as much as would be necessary for her maintenance when the property is large, by stating that this view is liable to the fault of *vidhivairūpya* according to the conclusion established in the Pūrvamīmāṁsā, that is, here the same sentence will be interpreted as laying down two different propositions in different sets of circumstances, which is not a legitimate or reasonable way of interpretation. The Sm. C. (II p 268) held the same view about the mother having no right to a share and was criticized by the Madanaratna (by name). Several works like the Vyavahārasāra (p. 225) and the Vivādacandra (p. 67)[1142] hold the

1141. Vide *Saradambal v. S. Subbarama* I. L. R. (1942) Mad. 630; *Jodu Rosamma v. Jodu Chenchiah* (1943) 2 M. L. J. p. 172 for the effect of the Act XVIII of 1937 on the status of widows.

1141a. जनन्यस्वधना पुत्रैर्विभागेंशं समं हरेत् इति स्मरणात् । अस्वधना प्रातिस्विकधनशून्या जननी पुत्रैरजीवद्विभागे क्रियमाणे पुत्रांशसममेकांशं हरेदित्यर्थः । स्मृतिच. II. 268. This text and the explanation are given also in the मदनरत्न (folio 92 a) in the same words.

1142. स्त्रीणां सर्वासामनंशत्वमेव । यत्राप्यंशश्रवणं पितुरूर्ध्वं विभजतां माताप्यंशं समं हरेदित्यादौ तत्रापि किञ्चिद्दानं विवक्षितम् । अर्हति स्त्रीत्यनुवृत्तौ न दायं निरिन्द्रिया अदाया हि स्त्रियो मताः—इति बौधायनवचनात् । निरिन्द्रियाः निःसत्त्वा इति प्रकाशः । अदाया अनंशा इत्यर्थः । विवादचन्द्र p. 67. The स्मृतिच. (II. p 267) also relies on बौधायन The बौ. ध. सू. after the verse पिता रक्षति ... न स्त्री स्वातन्त्र्यमर्हति has the sūtra निरिन्द्रिया ह्यदायाश्च स्त्रियो मता इति श्रुतिः (II. 2. 53). In the तै. सं. VI. 5. 8. 2 we have the words 'तस्मात्स्त्रियो निरिन्द्रिया अदायादीरपि पापात्पुंस उपस्तितरं वदन्ति ।'. Vide Bühler's note in S. B. E. vol. 14 p. 231 on the confusion about this text of Baud. मनु. IX. 18 is 'निरिन्द्रिया ह्यमन्त्राश्च स्त्रियोऽनृतमिति स्थितिः ॥' on which मेधातिथि explains 'इन्द्रियं वीर्यं धैर्यप्रज्ञाबलादि'.

view that no woman (whether wife or mother) should get a share of the ancestral wealth but only as much wealth as is necessary for maintenance and rely on the words of Baudhāyana "there is a Vedic text that women are devoid of strength and take no share", which refers to a passage in the Tai. S. VI. 5. 8. 2, occurring in the context of the ritual of the Soma sacrifice "therefore women being destitute of strength take no portion (of Soma drink) and speak more weakly than even a wretched (low) man". Manu IX. 18 also contains an echo of this passage of the Tai. S. and of Baud. Dh. S. There was an intermediate stage in the evolution of the rights of the wife or mother. The highest she could get in the husband's wealth was two thousand paṇas, according to Vyāsa,[1143] which is variously read and explained, the Sm. C. (II. p. 281) saying that it means as much wealth as would every year yield an income of 2000 paṇas.

In modern times some High Courts such as those at Bombay[1144] and Calcutta allow wives and mothers to have a share when the husband or the sons divide ancestral estate by metes and bounds, while in Southern India the practice of allotting shares to them has gone out of vogue long since and the Madras High Court does not allow a share to the mother but only maintenance. The Dāyabhāga seems to have[1145] held that a step-mother who was herself sonless was not entitled to a share when her step-sons came to a partition, but was only entitled to maintenance (vide *Srimati Hemangini v. Kedarnath* I. R. 16 I. A. p. 115 at p. 117).

1143. द्विसाहस्रः परो दायः स्त्रियै देयो धनस्य च । व्यास q. by स्मृतिच. II. p. 281, व्यव. नि. p. 450, विश्वरूप on या. II. 119.

1144. Vide *Dular Koeri v. Dwarkanath* 32 Cal. 234, *Damodardas v. Uttamram* 17 Bom. 271, *Jairam v. Nathu* 31 Bom. 54, *Hosbanna v. Devanna* 48 Bom. 468 for cases of a share allotted to the mother or step-mother. But see *Subramaniam v. Arunachelam* 28 Mad. 1, 8 for the statement that the right of a mother to a share on a partition between the sons is not enforced in the Madras Presidency. Vide *Nanuram v. Radhabai* I. L. R. (1942) Nag. p. 24 where it was held that the mother gets only maintenance when there is only a severance of interest between father and sons but no partition by metes and bounds.

1145. पितरि चोपरते सोदरभ्रातृभिर्विभागे क्रियमाणे मात्रेऽपि पुत्रसमांशो दातव्यः । समांशहारिणी मातेति वचनात् । मातृपदस्य जननीपरत्वात् न सपत्नीमातृपरत्वमपि सकृच्छ्रुतस्य मुख्यगौणत्वानुपपत्तेः । दायभाग III. 29-30 p. 67.

If a person had several wives and several sons from each wife, some of the texts prescribed from very ancient times that the sons should divide according to the wives or mothers (i. e. *patnībhāga*, or which is practically the same thing, *mātṛbhāga* was recommended), though the generally recognized rule formerly as well as now is to divide according to the number of sons i. e. *putrabhāga* (ignoring the fact of their being born from[1146] different mothers). For example, Gaut. 28. 15 recommends that partition should be made by grouping the sons according to their mothers and then allowing a special share to the eldest among each group of sons. Both Bṛ. (S. B. E. 33 p. 372 verse 15) and Vyāsa[1147] lay down that if there be many sons sprung from the same father, who are equal in caste and number but who are the sons of different mothers, a division according to mothers may be legally made. Such a partition on the basis of mothers is recognized in rare cases even now on[1148] the ground of custom in certain places and among certain castes.

A paternal grandmother or step-grandmother cannot herself demand a partition, but when a partition takes place between her son's sons, her own son being dead or when it takes place between her son and the sons of a deceased son she is entitled to a share. A text of Vyāsa says[1149] "the childless wives of the father are declared to be entitled to a share equal (to that of a son) and all grandmothers are declared equal to the mother". The Allahabad and Bombay High Courts hold that the grandmother is not entitled to a share when a partition takes place between her son and his sons, while the High Courts

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1146. प्रतिमातृ वा स्वस्ववर्गे भागविशेषः । गौ. 28. 15.

1147. समानजातिसंख्या ये जातास्त्वेकेन सूनवः । विभिन्नमातृकास्तेषां मातृभागः प्रशस्यते ॥ व्यास ; यद्येकजाता बहवः समाना जातिसंख्यया । सापत्न्यास्तैर्विभक्तव्यं मातृभागेन धर्मतः ॥ बृह. ; both are quoted by दायभाग III. 12. परा. मा. III. p. 503, व्य. म. p. 102, वि. र. p. 475 (बृह. only).

1148. Vide *Palaniappa v. Alayan* 48 I. A. 539 for a case from the Madura District in the Madras Presidency, where a custom among the *chettis* of allowing a partition on the principle of patnibhāga (division of property accordińg to wives or mothers) was upheld.

1149. असुतास्तु पितुः पत्न्यः समानांशाः प्रकीर्तिताः । पितामह्यश्च सर्वास्ता मातृतुल्याः प्रकीर्तिताः ॥ व्यास q. by अपरार्क p. 730, दायभाग III. 3. 2 p. 68, स्मृतिच. II· p 267, वि. र. p. 484.. The मद. पा. (p. 664) remarks: यदा तु पितामहोपार्जितं धनं पितापुत्रौ विभज्य गृह्णीतस्तदा पितामहपत्नी सपुत्रा पूर्वोक्तरीत्या समांशं लभते मातापत्यांशं समं हरेदित्युक्तत्वात् पितामहोपार्जितद्रव्यत्वाच्च । यदि पितामहपत्न्यपुत्रा तर्हि स्वालङ्कारं प्रीतिदत्तं लभते नांशम् । तथा पैतामहधनविभागे मातांशं न लभते किं तु स्वाभरणादिकमेव ।

of Calcutta and Patna hold that she is entitled to a share even in this last case [1150].

On account of certain bodily, mental or other defects and certain conduct also persons were excluded in ancient India from demanding a share on partition and also from taking by inheritance. Gaut. 28. 41, Āp. Dh. S. II. 6. 14. 1, Vas. 17. 52–53, Viṣṇu Dh. S. 15 32–39, Baud. Dh. S. II. 2. 43–46, Kauṭ. III. 5 speak [1151] of various grounds of exclusion from partition (and inheritance) such as lunacy, idiocy, impotence, excommunication for grave sins or lapses of conduct, blindness, incurable disease, entering a different āśrama (viz. that of forest hermit or *sannyāsa*). These grounds of exclusion probably arose from the fact of the persons labouring under them being regarded as incompetent to perform religious acts and from the close connection between property and its use for religious purposes. Jaimini [1152] (VI. 1. 41–42) lays down two propositions, viz. that one who is suffering from an incurable or irremediable bodily defect is not entitled to undertake vedic rites, such as Agnihotra, but that one who has some defect which is remediable may engage in them and Śabara gives a blind man, a deaf man and a cripple as persons who are incompetent to engage in Vedic rites. The story of the brothers Devāpi and Śantanu (vide

1150. Vide *Vithal v Prahlad* 39 Bom. 373 (partition among grandsons), *Kanhaiya Lal v. Gaura* 47 All. 127 (partition between grandsons), *Babuna v. Jagat Narain* 50 All. 532 (partition between one son and his predeceased brother's son), in all of which the grandmother was held entitled to a share. See *Sheonarain v Janki Prasad* 34 All. 505 (F. B), *Jamnabai v. Vasudev* 54 Bom. 417 for the proposition that in a suit for partition between father and his son only the paternal grandmother is not entitled to a share; but vide *Badri Roy v. Bhugvat* 8 Cal. 649, *Krishnalal v. Nandeshwar* 4 Pat. L. J. 39, 42–44 (for the opposite proposition that the grandmother would be entitled to a share in a partition between her only son and the latter's son). In view of the fact that Vyāsa declares the grandmother to be equal to the mother it appears that all grand-mothers, whether sonless or not, should secure a share.

1151. जडक्लीबौ भर्तव्यौ । गौ. 28. 41; एकधनेन ज्येष्ठं तोषयित्वा जीवन् पुत्रेभ्यो दायं व्यभजेत् समं क्लीबमुन्मत्तं पतितं च परिहाप्य । आप. ध. सू. II. 6. 14. 1; अतीतव्यवहारान्ग्रासाच्छादनैर्बिभृयुः । अन्धजडक्लीबव्यसनिव्याधितांश्च । अकर्मिणः । पतिततज्जातवर्जम् । बौ. ध. सू II 2. 43–46; अनंशास्त्वाश्रमान्तरगताः । क्लीबोन्मत्तपतिताश्च । वसिष्ठ 17. 52–53; पतितक्लीबाचिकित्स्यरोगविकलास्त्वभागहारिणः । विष्णुधर्मसूत्र 15. 32; पतितः पतिताज्जातः क्लीबाश्चानंशाः । जडोन्मत्तान्धकुष्ठिनश्च । अर्थशास्त्र III. 5.

1152. अङ्गहीनश्च तद्धर्मा । उत्पत्तौ नित्यसंयोगात् । जै. VI. 1. 41–42.

H. of Dh. vol. II. p. 109) as narrated in the Bṛhad-devatā[1153] states that the elder brother Devāpi suffered from a skin disease and so refused the kingdom which went to his younger brother Śantanu. We know from the Mahābhārata that Dhṛtarāṣṭra who was blind from birth, though elder, had to give up the kingdom in favour of his younger brother Pāṇḍu[1154]. The Mit. (on Yāj. II. 135) energetically combats the view put forward by some predecessors that all wealth is meant for sacrifices. They relied on two smṛti passages[1155] "all *dravya* (all kinds of wealth or movable property) has been created for the sake of sacrifice; therefore all those who are not competent to perform sacrifices are not entitled to share ancestral wealth but are only entitled to food and raiment. Wealth has been created for sacrifices; therefore one should employ it (or spend it) on purposes of dharma and not on women, fools and irreligious people". Kāt. (852) and Bṛ. (S. B. E. 33 p. 371 verse 10) contain similar remarks. The Mit. does not accept this proposition, which argues that on that hypothesis no gifts (apart from sacrifices) that are recommended by the śāstras will be possible, nor can one accomplish two of the *puruṣārthas*[1156] viz. *artha* and *kāma* (as required by Gaut. IX. 46, Yāj. I. 115) and that the verses quoted above only mean that whatever wealth is collected for sacrifices should be spent only for that purpose even by the sons of the man who collected it, since a smṛti text condemns generally everyone who does not spend wealth collected for a sacrifice for that purpose to becoming a crow or a *bhāsa* (a cock or water fowl) in the next life. The Mit. further argues that the view would be opposed to the conclusion of Jaimini III. 4. 20-24 that the Vedic injunction "one should wear gold on one's person" is merely *puruṣārtha* and not '*kratvartha*'. Aparārka

1153. त्वग्दोषी राजपुत्रश्च ऋष्टिषेणसुतोऽभवत् । बृहद्देवता VII. 156; न राज्यमहमर्हामि त्वग्दोषोपहतेन्द्रियः ॥ बृहद्देवता VIII. 5.

1154. अन्धः करणहीनत्वान्न वै राजा पिता तव । उद्योगपर्व 147. 39; vide आदिपर्व 106 (chap. 100 of cr. ed.) for the congenital blindness of धृतराष्ट्र.

1155. यज्ञार्थं द्रव्यमुत्पन्नं तत्रानधिकृतास्तु ये । अरिक्थभाजस्ते सर्वे ग्रासाच्छादनभाजनाः ॥ यज्ञार्थं विहितं वित्तं तस्मात्तद् विनियोजयेत् । स्थानेषु धर्मजुष्टेषु न स्त्रीमूर्खविधर्मिषु ॥ q. by मिता. on या. II. 135, परा. मा. III. p. 534; compare शान्तिपर्व 26. 25: यज्ञाय सृष्टानि धनानि धात्रा यज्ञाय सृष्टः पुरुषो रक्षिता च । तस्मात् सर्वं यज्ञ एवोपयोज्यं धनं न कामाय हितं प्रशस्तम् ॥. The व्य. मयूख p. 157 appears to ascribe the verse यज्ञार्थं to देवल and the दायतत्त्व p. 172 ascribes it to कात्यायन. Vide यथा यथा विभागाप्तं धनं यागार्थतामियात् । तथा तथा विधातव्यं विद्वद्भिर्भागगौरवम् ॥ कात्या. 852 q. by स्मृतिच. II. p. 265, परा. मा. III. p. 490.

1156. Vide H. of Dh. vol. II. pp. 8-9 for the puruṣārthas.

also holds the same view[1157] and adds that women have the authority to perform pūrtadharma (acts of charity such as construction of wells, temples &c.). Vide H. of Dh. vol. II. pp. 844-45 for *iṣṭa* and *pūrta*.

The most famous passages on the grounds of exclusion from inheritance are Manu IX. 201, Yāj. II. 140 and Nār. (dāyabhāga, 21-22). Manu IX. 201 provides[1158] "impotent persons, outcasts (*patita*), persons blind or deaf from birth, insane persons, idiots, the dumb and those deficient in any organ (or sense) are

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1157. सर्वस्या एव धनोत्पत्तेर्यज्ञार्थत्वे प्रमाणाभावात् । यैव हि-द्वादश रात्रीर्दीक्षितो भृतिं वन्वीत-इत्येवमादिवचनविहिता सैव धनोत्पत्तिः क्रत्वर्था । अन्यथा तु पुरुषार्थैव । अपरार्क p. 743.

1158. अनंशौ क्लीबपतितौ जात्यन्धबधिरौ तथा । उन्मत्तजडमूकाश्च ये च केचिन्निरिन्द्रियाः ॥ मनु IX. 201 ; क्लीबोथ पतितस्तज्जः पङ्गुरुन्मत्तको जडः । अन्धोऽचिकित्स्यरोगार्ता भर्तव्याः स्युर्निरंशकाः ॥ या. II. 140 ; मृते पितरि न क्लीबकुष्ठ्युन्मत्तजडान्धकाः । पतितः पतितापत्यं लिङ्गी दायांशभागिनः ॥ तेषां पतितवर्जेभ्यो भक्तवस्त्रं प्रदीयते । तत्सुताः पितृदायांशं लभेरन् दोषवर्जिताः ॥ देवल q. by दायभाग V. 11 p. 102 (which explains लिङ्गी as प्रव्रजितादि), वि. र. p. 490 (लिङ्गी अतिशयेन कपटव्रतचारी), स्मृतिच. II. p. 272; पितृद्विड् पतितः षण्ढो यश्च स्यादौपपातिकः । औरसा अपि नैतंशं लभेरन् क्षेत्रजाः कुतः । दीर्घतीव्रामयग्रस्ता जडोन्मत्तान्धपङ्गवः । भर्तव्याः स्युः कुले चैते तत्पुत्रास्त्वंशभागिनः ॥ नारद (दाय. 21-22). पितृद्विड् is variously explained; वि. र. p. 489 'द्वेषश्च पितरि जीवति मारणादिफलः मृते तु तदुद्देशेनोदकाद्यदानरूपः'; 'पितृद्वेषो नाम असौ मम पिता नेत्येवंरूपः' सरस्वतीविलास p. 364. In नारद, the मिता., दायभाग, अपरार्क, दायतत्त्व and व्य. प्र. read औपपातिकः (which means 'one guilty of उपपातकs'). Vide मनु. XI. 59-66 and विष्णुधर्मसूत्र chap. 37 for long lists of उपपातकs such as गोवध, पारदार्य, अयाज्ययाजन &c. The स्मृतिच. II. p. 270 reads अवपातिकः and explains अवपातिकः अवपातितः ... अवपातितस्य महापराधेन बन्धुबाहिष्कृतस्य' and quotes शङ्खलिखितसूत्र in support 'आवपातिकस्य रिक्थपिण्डोदकानि निवर्तन्ते' which is read as अपपात्रितस्य by the दायभाग V. 3. p. 100. and अपरार्क p. 720. The मदनरत्न and व्य. मयूख p. 163 read अपयात्रित in नारद, while कल्पतरु read अपपात्रित and explained it as 'राजवधादिदोषेण बान्धवैर्यस्य घटापवर्जनं कृतम्' (vide दायतत्त्व). The मदनरत्न gave this very explanation for अपयात्रित. The वि. र. reads अपपात्रित (p. 489) and gives the same explanation of it as the कल्पतरु. The व्य. मयूख p. 163 says it is better to explain अपयात्रित (derived from यात्रा meaning 'sea voyage') differently, disapproves of the explanation of अपयात्रित given by the मदनरत्न on the ground that for one guilty of sedition or high treason the breaking of a jar or of excommunication is not prescribed and that अपयात्रित means 'one who goes to another continent or country by sea in a vessel for trade and the like'. Constantly engaging in sea voyage was one of the matters forbidden in the Kali age; *vide* 'द्विजस्याब्धौ तु नौयातुः शोधितस्याप्यसंग्रहः' quoted by नीलकण्ठ, which verse is quoted as from आदित्यपुराण by हेमाद्रि vol. III. 2 p. 667. नीलकण्ठ is wrong about high treason. गौतम (20. 1-4) declares that one should desert even one's father who is guilty of regicide and describes a ceremony in which an unclean vessel is brought by a slave or servant from a dust heap and is filled with water from a jar carried by a female slave and then the vessel is struck with the foot and emptied with the words 'I make so and so one who will get no water from me.'

entitled to no share". Yāj. II. 140 declares that the impotent, the outcast and his son, a lame man, a mad man, an idiot, a blind man and one afflicted with an incurable disease are not entitled to a share. It will be noticed that Yāj. expressly excludes the son of an outcast, as do also Baud. and Devala. Nār. (dāyabhāga 21-22) says 'one hostile to his father, an outcast (*patita*), an impotent person, one who goes to another continent by sea (from India)—these even though they be *aurasa* sons shall not get a share; how can a kṣetraja (a son of the wife raised by another person by appointment) get a share (if he has these defects) and persons afflicted with long standing (like phthisis) and severe diseases (like leprosy), persons who are either idiots, insane or lame—these must be maintained by the family, but their sons are entitled to a share'. These verses of Manu, Yāj. and Nār. have been quoted and explained in numerous decisions of the courts in India, but all such cases are mostly of academic interest now since the passing of the Hindu Inheritance (Disabilities Removal) Act of 1928 and hence need not be dwelt upon here. The Act (XII of 1928) applies to the whole of British India except to persons governed by the Dāyabhāga school and provides that no person governed by the Hindu Law, other than a person who is and has been from birth a lunatic or idiot, shall be excluded from inheritance or from any right or share in joint family property by reason only of any disease, deformity or physical or mental defect. This Act is not retrospective and does not confer on any person any right in respect of any religious office or service or any right to the management of any religious or charitable trust which he would not have had before the Act. Therefore under the Act the only defects that would disqualify a person governed by the Mitākṣarā school from claiming partition or inheritance are congenital lunacy and congenital idiocy. Under the Dāyabhāga school the grounds of exclusion will still remain as before except as modified by judicial decisions and by other Acts. An important question under the Mit. school arises in this way. What is the exact position of a son that is congenitally idiotic or insane. Both Manu (IX. 201 and 203) and Yāj. (II. 140, 141) declare that they are *anaṁśa* or *niraṁśaka* (not entitled to a share of the ancestral estate), but must be given maintenance and if maintenance be not given by those who are liable to give it, they would incur sin (as Manu IX. 202 expressly says) and that the sons of disqualified persons take a share, if they are themselves free from defects. If A has a son B who is congenitally idiotic, is B still a copar-

cener of A (though not entitled to a share or to claim partition) so that A cannot make a gift of the whole or a portion of the property or a bequest thereof to his widow? This question arose in *Amirthammal v. Vallimayil* I. L. R. (1942) Mad. 807 (F. B.), where it was decided that, when A made a will in the above circumstances bequeathing all family property absolutely to his widow and two sons were born to the disqualified man B after A's death, the father had no power to make a will as the disqualified member B was still a coparcener (though not entitled to a share) and that he transmitted the heritage to his sons. The chief ground of the decision was a passage of the Sarasvatīvilāsa (explained on pp. 817 and 828–830) which is quoted below[1159].

The grounds of disqualification apply to males and females alike, as stated by the Mit. on Yāj. II. 140[1160]. A few remarks will be made on *patita* and his son. The commission of every sinful act did not make one *patita* as the word was technically understood. There were various grades among sins, which will be described in the section on *pātakas*. The grave sins were differently enumerated by different ancient writers. In explaining[1161]

1159. अनंशौ क्लीबपतिताविति द्वित्वोक्त्या दायार्हभ्रातृभिः रिक्थग्राहैर्वा योषिद्ग्राहैर्वा पोष्यौ। जात्यन्धबधिराविति द्वित्वोक्त्या तयोरंशोऽस्त्येव किं त्वंशयुक्तावपि पोष्यौ विवाहसंस्कारसद्भावात्। तथाशब्दप्रयोगेण पङ्ग्वादयः विवाहसंस्कारार्हाश्चेदंशहराः पोष्याश्चेति रहस्यम्। उन्मत्तजडमूकाश्चेति समुच्चयोक्त्या तेऽपि भर्तव्या एव नांशहराः। विवाहार्हा न चेदिति शेषः। स. वि. p. 364. The S. V. does not appear to be laying down any novel proposition. All that this passage appears to mean is that though these disqualified persons cannot themselves enjoy a share, yet they do have a share (in theory) and if they can marry or are eligible for marriage their sons that are free from defects do take a share and that one cannot lay down a sweeping proposition that all congenitally dumb or insane persons or idiots can marry, but that there are degrees in these defects and in certain extreme circumstances these disqualified persons cannot marry. Vide Madras Law Journal for 1942 (Journal portion pp. 63–82) for a reasoned criticism of the F. B. case.

1160. पतितादिषु तु पुंलिङ्गत्वमविवक्षितम्। अतश्च पत्नीदुहितृमात्रादीनामप्युक्तदोषदुष्टानामनंशित्वं वेदितव्यम्। मिता. on या. II. 140.

1161. सप्त मर्यादाः कवयस्ततक्षुस्तासामेकामिदभ्यंहुरो गात्। ऋ. X. 5. 6; सप्त एव मर्यादाः कवयः ततक्षुः चक्रुः। तासामेकामपि अधिगच्छन् अंहस्वान् भवति। स्तेयं तल्पारोहणं ब्रह्महत्यां भ्रूणहत्यां दुष्कृतस्य कर्मणः पुनः पुनः सेवां पातके अनृतोद्यमिति। निरुक्त VI. 27. The meaning of this Ṛgveda verse is doubtful. The Nir. distinguishes between ब्रह्महत्या and भ्रूणहत्या. For the various meanings of भ्रूण, vide H. of Dh. vol. II. p. 131 *n.* 290 and p. 148 *n.* 334. In the Nir. भ्रूण probably means 'foetus', as it does in Gaut. XXI. 9 'भ्रूणहनि हीनवर्णसेवायां च स्त्री पतति'. Vas. 20. 23 (भ्रूणहनं वक्ष्यामो ब्राह्मणं हत्वा भ्रूणहा भवत्यविज्ञातं च गर्भम्) appears to give two senses to 'भ्रूणहा' (killer of a brāhmaṇa or killer of a foetus when its sex is not known).

Ṛg. X. 5.6 "the wise made seven boundaries (restrictions) by transgressing even any one of which a man becomes sinful", the Nirukta VI. 27 enumerates the seven sins as "theft, violating the bed (of the *guru*), murder of a brāhmaṇa, murder of a bhrūṇa, continual performance of sinful acts, telling a lie as to a sinful matter". In the Tai. S. II. 5. 1. 1., Śat. Br. XIII. 3. 1. 1. and other Brāhmaṇa texts, the murder of a brāhmaṇa seems to have been regarded as the gravest of all sins (vide H. of Dh. vol. II. p. 147 and *n*. 333). In the Chāndogya[1162] Up. V. 10. 9 the five great sinners are declared to be the thief of gold, the drinker of liquor, the violator of the guru's bed, the murderer of a brāhmaṇa and one who associates with them. Gaut. (XXI. 1-3) declares that the murderer of a brāhmaṇa, the drinker of liquor, one guilty of sexual intercourse with the wife of his *guru* (elder or teacher) or with women who are the sapiṇḍas of his father or mother, a thief (who steals a brāhmaṇa's gold), an atheist, one who continually does forbidden acts, one who does not abandon a *patita* (son or the like through affection) and one who deserts his relations though they are not *patita* are *patitas* and so is one who incites another to commit a grave sin and also one who associates with a *patita* for a year (as regards a vehicle, a seat and bed). Āp. Dh. S. (I. 7. 21. 8-11) contains a longer list of grave sins (*patanīya*). Vas. (I. 19-21) states that there are five grave sins (*mahāpātakas*) viz. violating the bed of the *guru*, drinking liquor, murder of a learned brāhmaṇa, robbing a brāhmaṇa of gold and contact with a *patita* by being his teacher or pupil or priest or by contracting a matrimonial alliance with him. The Baud. Dh. S. II. 1. 50-56 has a somewhat different list of *patanīya* actions viz. sea voyage, robbing a brāhmaṇa of his wealth and misappropriating a deposit, perjury for land, trading in (forbidden) articles, service under a śūdra and having a child from a śūdra woman. Manu XI. 54, Yāj. III. 227 and Viṣṇu Dh. S. 35. 1 enumerate the five well-

1162. स्तेनो हिरण्यस्य सुरां पिबंश्च गुरोस्तल्पमावसन्ब्रह्महा चैते पतन्ति चत्वारः पञ्चमश्चाचरंस्तैरिति । छान्दोग्योप. V. 10. 9; बृह. उप. IV. 3. 22 mentions as great sinners the thief and the भ्रूणहा. Though some later smṛtis employ the word स्तेय, it is always restricted by the commentators (e. g. Mit. on Yāj. III. 227) to the theft of brāhmaṇa's gold. Vide H. of Dh. vol. II. p. 580 for ancient texts asking a person to desert one's father who is *patita* or a regicide &c., but never his mother even though she be *patita*. Vide विष्णुधर्मसूत्र 57. 1-5. 'अथ त्याज्याः । व्रात्याः । पतिताः । त्रिपुरुषं मातृतः पितृतश्चाब्रह्मण्याः । सर्व एवाभोज्याश्चाप्रतिग्राह्याः ।'

known mahāpātakas, viz. murder of a brāhmaṇa, drinking of liquor, theft, incest and continuous association for a year with these. Association with any sinner of any sort for one year made the associater guilty of the same sin (Yāj. III. 261). *Saṁsarga* or *saṁyoga* (contact or association) was of various kinds. Manu XI. 180 (= Śānti 165.37 = Baud. Dh. S. II. 1. 88 = Vas. 1. 22) states that a person who associates with a *patita* for a year as regards using the same vehicle or seat or taking food with him in the same row becomes patita ; but he becomes patita at once by being his sacrificial priest or by being his teacher of the Veda or by entering into[1163] a matrimonial alliance with him. Vṛddha-Bṛhaspati[1164] (quoted by Mitākṣarā on Yāj. III. 261) states that association (*saṅkara*) with a *patita* is of nine kinds viz. occupying the same seat or bed, taking dinner in the same row with him, cooking food in his cooking pots, partaking of cooked food prepared by him, being a sacrificial priest or employing him as a priest, being his teacher of the Veda or making him one's teacher of the Veda, giving him one's daughter in marriage or taking his daughter in marriage, taking food with him in the same pot. Devala[1165] declares that sin is passed on from one man to another by conversation (with a sinner), by touching him, by his breath (coming in close contact with one's nose), by occupying the same vehicle (horse) or seat, by eating (in his company), by being a priest for him or by making him one's priest, by being his teacher of Veda or making him one's teacher or by matrimonial alliance. The same causes that led to a male being patita operated in the case of a woman to make her *patita* ; there was one additional cause viz a woman became *patita* by sexual connection with a male of a lower class than herself (Gaut. 21. 9, Yāj. III. 297 and Śaunaka[1166]). The ancient sages were very considerate even

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1163. संवत्सरेण पतति पतितेन सहाचरन् । एकयानभोजनासनशयनैः । यौनस्रौवमौखैः सम्बन्धैस्तु सद्य एव । विष्णु. 35. 3–5. 'स्रौवशब्देन याजनमभिधीयते मौख(मुख्य)शब्देन मुखभवत्वेनाध्यापनम्' मिता. on या. III. 261.

1164. यथाह वृद्धबृहस्पतिः–एकशय्यासनं पङ्क्तिभाण्डपक्वान्नमिश्रणम् । याजनाध्यापने योनिस्तथा च सहभोजनम् । नवधा सङ्करः प्रोक्तो न कर्तव्योऽधमैः सह । मिता. on या. III. 261 (printed text reads पंक्त्यन्न for पक्वान्न, but this seems to be wrong if we look at the explanation), अपरार्क p. 1086, गृह. र. p. 587 (both ascribe to बृह.). These verses are ascribed to देवल in दीपकलिका p. 99.

1165. संलापस्पर्शनिःश्वाससहयानासनाशनात् । याजनाध्यापनाद्यौनात्पापं संक्रामते नृणाम् ॥ याजनं योनिसम्बन्धं स्वाध्यायं सहभोजनम् । कृत्वा सद्यः पतत्येव पतितेन न संशयः ॥ देवल q. by मिता. on या. III. 261, अपरार्क p. 1087.

1166. यथाह शौनकः । पुरुषस्य यानि पतननिमित्तानि स्त्रीणामपि तान्येव । ब्राह्मणी हीनवर्णसेवायामधिकं पततीति । मिता. on या. III. 261.

to fallen women. They provide that even women that are *patita* and have not yet performed the proper penance were not to be cast on the streets, but they were to be given a hut (near the house) for residence and bare maintenance that would keep body and soul together and were to be guarded against further lapses (Yāj. III. 296). Vide H. of Dh. vol. II pp. 571–573.

How far unchastity will debar a female from inheritance will be discussed a little later on. Adultery in general was an upapātaka only according to Manu XI. 59 and the ordinary penance for it was *cāndrāyaṇa* or *govrata* (Manu XI. 117). But if the adultery was with a person of low caste, the woman became *patita* and would not have been entitled to a share on partition (as a wife or mother) under the old Hindu Law.

In the case of those guilty of grave sins who did not perform the prāyaścittas prescribed for such sins there was a peculiar procedure called *ghaṭasphoṭa* prescribed for excommunicating them and severing all connection with them and treating them as dead, which has been described in H. of Dh. vol. II p. 388. Vide Gaut. 20. 2–7, Manu XI. 182–184, Yāj. III. 294. But when the sinner performed the appropriate prāyaścitta (penance), the smṛtis declare that he became fit to be associated with (*vyavahārya*), he was to be welcomed by his relatives who were to take a bath along with him in a holy river or the like and who were to throw in the water an unused jar filled with water, he should offer grass to cows in the midst of his relations, they were not to find fault with him later on. Vide Manu XI. 186–187, Yāj. III. 295, 299, Vas. 15. 20, Gaut. 20- 10–14 (which prescribes the recital of certain Vedic mantras and the offering of clarified butter into fire). Āp. Dh. S. I. 9. 24. 24–25 and I. 10. 29. 1–2 prescribe for the sinner who kills a *guru* or a *śrotriya* that has performed *soma* sacrifice or a *bhrūṇa* certain observances till death, but declare that such a person can never get rid of the loss of the right of association with all people, that there is no return for him to his relatives.[1167] In the Nirṇayasindhu (III Uttarārdha pp. 567–68) and in the Dharmasindhu (III Uttarārdha pp. 453–54) the rite of *ghaṭasphoṭa* for a *patita* and the rite for taking him back are concisely described.[1168]

The smṛtis state that when a man knowingly committed a sin, penances did not necessarily remove the otherworldly con-

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1167. गुरुं हत्वा श्रोत्रियं वा कर्मसमाप्तमेतेनैव विधिनोत्तमादुच्छ्वासाच्चरेत् । नास्यास्मिँल्लोके प्रत्यापत्तिर्विद्यते कल्मषं तु निर्हण्यते । आप. ध. सू. I. 9. 24. 24–25.

1168. Vide Appendix.

sequences of the sin altogether but the sinner became fit to be associated with (Yāj. III. 226). In the case of the *patita*, even his son born after he committed a grave sin was held to be patita by most writers of smṛtis (Yāj. II. 140, Viṣṇu Dh. S. 15. 35–36, Kauṭ. III. 5)[1169]. But in the case of the daughter a difference was mercifully made. Vas. (13. 51–53)[1170] states "the sages say that one born of a patita becomes a patita, except a female child, since she is to go to another (person as his wife); one may marry her without accepting any wealth (of her *patita* father) along with her". Yāj. III. 261 also says that the daughter of a patita may be married after making her fast and after making her leave everything (belonging to the patita father) in her father's house. Viśvarūpa (on Yāj. III. 257) quotes a prose passage from Hārīta to the following effect : the daughter of a patita should have fasted one day and night, should take a bath without clothes, should put on white and new garments in the morning, should loudly repeat thrice 'I do not belong to him (my patita father) nor is he anyone to me' and then she may be married at a sacred place (river etc.) or in one's (the bridegroom's) house.

These rules about a patita led to this result that if a Hindu changed his religion or was excommunicated or was made an outcast for some lapse that his caste looked upon with great disfavour, he was deemed to have lost his rights of partition or inheritance. The Caste Disabilities Removal Act (XXI of 1850) abrogates these rules of the ancient[1171] Hindu Law.

1169. तथा चौरसाः पुत्रा भागहारिणः । न तु पतनीयस्य पतनीये कर्मणि कृते त्वनन्तरोत्पन्नाः । विष्णुधर्मसूत्र 15. 34–36. On या. II. 140 the मद्. पा. 681 explains: तज्जः पतितादकृतप्रायश्चित्तादुत्पन्नः .

1170. पतितेनोत्पन्नः पतितो भवतीत्याहुरन्यत्र स्त्रियाः। सा हि परगामिनी। तामरिक्थामुपेयात् । वसिष्ठ 13. 51–53; कन्यां समुद्वहेदेषां सोपवासामकिंचनाम् । या. III. 261 ; तथा च हारीतः । पतितस्य तु कुमारीं विवस्त्रामाप्लाव्याहोरात्रोपोषितां प्रातः शुक्लेनाहतेन वाससाच्छाद्य नाहमेतेषां न ममैत इति त्रिरुच्चैरभिधाय तीर्थे स्वगृहे वोद्वहेत् । विश्वरूप on या. III. 257. The मिता. on the same verse of या. quotes this passage (with slight variations) as from वृद्धहारीत.

1171. Vide *Khunni Lal v. Gobind* L. R. 38 I. A. p. 87 where A and B, being father and son and forming a joint family and A becoming a convert to the Moslem religion, it was held that A did not forfeit his interest in the joint family property and that the only effect of the conversion was that it operated as a severance of A from the family and that one half of the property immediately vested in A and the other half in B. Vide p. 101 where the P. C. say that the Legislature virtually set aside the provisions of the Hindu Law. The Act of 1850 is felt by many Hindus as a great hardship and should be removed from the statute book. In England the Blasphemy Act of 1698 is still in force.

All the smṛtis say that those who are deprived of their rights to partition on account of the several defects mentioned are entitled to maintenance out of the family property as long as they are alive (Gaut. 28. 41, Vas. 17. 54, Viṣṇu Dh. S. 15. 33, Manu IX. 202, Yāj. II. 140 etc.). If the disqualified persons want to marry or are married, then their sonless wives that are chaste should be maintained (Yāj. II. 142), but those that are unchaste should be driven out and so also those wives that are hostile to the family; but the Mit. adds that even hostile wives of disqualified heirs must be maintained provided they are chaste. If the disqualified person has an *aurasa* son or *kṣetraja* son[1171a] who is free from the defects mentioned above (such as impotence) he becomes entitled to a share of the joint family property and the daughters of disqualified persons are entitled to be maintained in the family and provision must be made for their marriages (Manu IX. 203, Yāj. II. 141). It follows that disqualified heirs could not adopt, since Yāj. II. 141 mentions only aurasa and kṣetraja sons. Many of the smṛtis did not allow even maintenance to the *patita* and his son (vide Baud. Dh. S. II. 2. 46, Kauṭ. III. 5, Devala, Viṣṇu Dh. S. 15. 35–36). Coparceners were prevented from claiming a share at a partition if at the time of the partition they were labouring under the defects mentioned above. But if after partition[1172] the defect which disqualified a member be

1171a. तत्र क्लीबस्य क्षेत्रजः पुत्रः सम्भवत्यन्येषामौरसा अपि । औरसक्षेत्रजयोर्ग्रहणमितरपुत्रव्युदासार्थम् । मिता. on या. II. 141. In former ages a क्षेत्रज son was possible in the case of an impotent person. The अर्थशास्त्र also (III. 5) states सति भार्यार्थे तेषामपत्यमतद्विधं भागं हरेत् । ग्रासाच्छादनमितरे पतितवर्जाः । तेषां च कृतदाराणां लुप्ते प्रजनने सति । सृजेयुर्बान्धवाः पुत्रांस्तेषामंशं प्रकल्पयेत् ॥. मनु IX. 203 allows even impotent persons to marry, though he appears to have disapproved of it. A क्लीब is indicated, acc. to कात्यायन, by the following signs: 'न मूत्रं फेनिलं यस्य विष्ठा चाप्सु निमज्जति । मेढ्रश्चोन्मादशुक्राभ्यां हीनः क्लीबः स उच्यते ॥ कात्या. q. by दायभाग V. 8. p. 102. नारद (स्त्रीपुंसयोग 9–10) states the signs of a potent man and in verses 11–13 speaks of 14 kinds of impotent persons. The अर्थशास्त्र in III. 18 declares that the means of judging about impotence are women, froth of urine and the sinking of the fæces in water (क्लीबभावे स्त्रियः मूत्रफेनमप्सु विष्ठानिमज्जनं च). The close agreement between Kauṭ. and Kāt. may be noted.

1172. एतेषां विभागात् प्रागेव दोषप्राप्तावनंशत्वमुपपन्नं न पुनर्विभक्तस्य । विभागोत्तरकालमप्यौषधादिना दोषनिर्हरणे भागप्राप्तिरस्त्येव । विभक्तेषु सुतो जातः सवर्णायां विभागभागित्यस्य समानन्यायत्वात् । मिता. on या.II. 140. Vide *Deo Kishen v. Budh Prakash* 5 All. 509 (F. B.) and *Abilakh v. Bhekhi* 22 Cal. 864 for cases respectively of insanity at the time of inheritance barring succession and supervening insanity not divesting a person.

removed by medical treatment or the like then the disqualified member was entitled to reopen the partition on the analogy of a posthumous son born after partition. So also if a person is quite free from defect when he takes at a partition a share in joint family property or inherits, subsequently supervening defect does not divest the property once vested in him.

Some of the smṛtis contain rules that appear to be only recommendatory. Āp. Dh.[1173] S. II. 6. 14. 15 says that if even the eldest son or brother were to waste joint wealth in immoral or improper ways he should be given no share (by the father or brothers at a partition). To the same effect are Gaut. 28. 38 and Manu IX. 214.

Gaut. 28. 43 and Viṣṇu Dh. S. 15. 37 provide[1174] that the sons of *pratiloma* unions (i. e. of a man with a woman of a higher class) are to be dealt with like the sons of a brāhmaṇa from a śūdra woman i. e. they would be entitled to maintenance from their father, though pratiloma unions were condemned. Kāt. (862–864) provides that the son of a woman married out of her order, one who is born of a *sagotra* union and one who is an apostate from the order of ascetics do not obtain ancestral wealth; but the son of a woman married in the wrong order takes the ancestral wealth if he is of the same class as his father, and the son of a woman who is not of the same caste as the husband (but of a lower caste) and is married in the proper order takes the wealth of the father. But the son of a woman

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1173. यस्त्वधर्मेण द्रव्याणि प्रतिपादयति ज्येष्ठोपि तमभागं कुर्वीत । आप. ध. सू. II. 6. 14. 15; सवर्णापुत्रोऽप्यन्याय्यवृत्तो न लभेतैकेषाम् । गौ. 28. 38.

1174. शूद्रापुत्रवत्प्रतिलोमासु । गौ. 28. 43 ; प्रतिलोमासु स्त्रीषु चोत्पन्नाश्चाभागिनः । विष्णुधर्मसूत्र 15. 37; अक्रमोढासुतश्चैव सगोत्राद्यस्तु जायते । प्रव्रज्यावसितश्चैव न रिक्थं तेषु चार्हति ॥ अक्रमोढासुतस्त्वृक्थी सवर्णश्च यदा पितुः । असवर्णप्रसूतश्च क्रमोढायां च यो भवेत् ॥ प्रतिलोमप्रसूता या तस्याः पुत्रो न रिक्थभाक् । ग्रासाच्छादनमत्यन्तं देयं तद्बन्धुभिर्मतम् ॥ बन्धूनामप्यभावे तु पित्र्यं द्रव्यं तदाप्नुयात् ॥ कात्या. (862–864) q. by दायभाग V. 14 p. 103, वि. र. p. 491, वि. चि. pp. 133–134, व्य. मयूख pp. 163–164. The word अक्रमोढासुत is interpreted in two ways: (1) If a brāhmaṇa married a kṣatriya girl first and then married a brāhmaṇa girl, both women became अक्रमोढा (as the procedure was against Manu III. 12). The son of the kṣatriya woman in such a case did not take the wealth of his father but only the son of the other woman took it. The other interpretation (given by the व्यवहारमयूख) is based upon the doctrine of परिवेदन, for which vide H. of Dh. vol. II. pp. 546–549 and Manu, III. 172. The son of a younger sister married before her elder sister and of the latter married after a younger one were both excluded from inheritance to their father. Kāt. (862) is quoted in *Natha v. Chotalal* 55 Bom. 1 at p. 8.

united with a man in the reverse order of castes does not take the ancestral estate; but the approved view is that he should be given food and raiment till his death by the kinsmen. In case there are no kinsmen such a son takes the whole wealth of his father and if the father left no wealth kinsmen are not bound to maintain him.

Provision must also be made before ordering partition in a suit for partition by a brother for the marriage expenses of the unmarried sister or sisters of the brothers. Here there has been a great divergence of views among the writers of digests and commentaries. Kauṭ. III.5 (quoted below in *n.* 1181), Viṣṇu Dh. S.18. 35 and 15. 31 and Bṛ. simply state that wealth for the marriage expenses of the unmarried sisters must be set apart. But Manu IX. 118, Yāj. II. 124 and Kāt. (858)[1175] state that the brothers should get their unmarried sisters married by giving them one fourth share. The Mit. explains[1176] that this does not mean that each brother is to give one fourth of his share to the sister (for in that case if there are five brothers and one unmarried sister she may get more than each brother) but that the unmarried sister is to get one fourth of what she would have got if she were a male and that if a person has sons and daughters from wives of different classes then the unmarried daughter of the wife of each class will take one fourth of what her brother from the same mother would have taken. The Mit. further adds that one should not explain that the word " one fourth " is not to be taken literally and that the unmarried sister gets only as much as is necessary for her marriage, since such an explanation is opposed to the express words of Manu IX. 118 and since Manu declaress sinfulness as the consequence of not giving one fourth share. The Mit. informs us that its explanation was the same as that of Asahāya and Medhātithi and that Bhāruci gave another explanation (viz. that an unmarried sister was entitled to as much wealth as would be necessary for her

1175. कन्यकानामदत्तानां चतुर्थो भाग इष्यते । पुत्राणां तु त्रयो भागाः स्वाल्पं त्वल्पधने स्मृतम् ॥ कात्या. q. by दायभाग III. 35 p. 69, स्मृतिच. II. p. 268, वि. र. p. 494. This text is cited in 53 Mad. 84 at p. 97.

1176. निजादंशाच्चतुर्थमंशं दत्त्वा । अनेन दुहितरोऽपि पितुरूर्ध्वमंशभागिन्य इति गम्यते । न च निजादंशाद् दद्यांशं तु तुरीयकमिति तुरीयांशाविवक्षया संस्कारमात्रोपयोगि द्रव्यं दत्त्वेति व्याख्यानं युक्तं मनुवचनविरोधात् 'स्वेभ्योंऽशेभ्यस्तु ... पतिताः स्युरदित्सवः ॥' ... पतिताः स्युरदित्सव इत्यकरणे प्रत्यवायश्रवणादवश्यं दातव्यता प्रतीयते । मिता. on या. II. 124.

marriage and not to a definite share). The Dāyabhāga held the opinion[1177] that if ancestral wealth was small, the provision for the marriage of the unmarried daughter should be made by giving her a fourth share but if the wealth was ample then she should get only as much as was necessary for her marriage. The Sm. C., V. R. p. 494, V. C. p. 134 follow the view of Bhāruci, while the V. M. (p. 106), Madanaratna and V. P. (p. 456 ff) follow the Mit. The former group particularly relies on the texts of Devala[1178] (wealth necessary for marriage should be given to unmarried daughters from the paternal estate), Śaṅkha (when partition of heritage takes place the unmarried daughter takes the maidenly trinkets, wealth for her marriage expenses and strīdhana) and Viṣṇu Dh. S. 15. 31. In modern times the Courts allow no share to unmarried daughters but only provision for marriage expenses and this too is restricted to the unmarried sister of a person who requires or sues for partition and does not hold good as to the daughters of brothers or other collaterals[1179]. In *Bhagavati Shukul* v. *Ram Jatan* 45 All. 297 it was held (at p. 299) that "quarter share" in the text means as much money as will suffice for marriage expenses and that where the daughter was a cripple and blind and all the property was worth Rs. 500 an alienation of the whole of it by the widowed mother for raising a dowry for the daughter was justifiable.

1177. अल्पधने पुत्रैः स्वात्स्वादंशादाकृष्य कन्याभ्यश्चतुर्थांशो दातव्यः । यथा मनुः स्वेभ्यः० । ... एवं च बहुतरधने विवाहोचितधनं दातव्यं न चतुर्थांशनियम इति सिध्यति । दायभाग III. 36, 39 pp. 69–70. The दायतत्त्व p. 171 says: एवं तुरीयांशदानप्रतिपाद-कमपि विवाहोचितद्रव्यदानपरम् ।

1178. कन्याभ्यश्च पितृद्रव्यं देयं वैवाहिकं वसु । अपुत्रकस्य स्वं कन्या धर्मजा पुत्रवद्धरेत् ॥ देवल q. by स्मृतिच. II. p. 268, व्यव. नि. p. 451, परा. मा. III. p. 510; विभज्यमाने दायाद्ये कन्यालङ्कारं वैवाहिकं स्त्रीधनं च कन्या लभेत । शङ्ख q. by स्मृतिच. II. p. 269, नि. र. p. 495, परा. मा. III. p. 511 ; अनूढानां स्ववित्तानुरूपेण संस्कारं कुर्यात् । विष्णुधर्मसूत्र 15. 31.

1179. Vide *Subbbayya v. Anant* 53 Mad. 84, where A had a son S by one wife and a son S1 and three daughters D1, D2, and D3 by another wife and S sued A and S1 for partition and D1 was married after the institution of the suit, one-third of the marriage expenses of D1 were deducted from the one-third share of S1 and as regards one-third of the marriage expenses of D2 and D3 (which were yet to be incurred) his share (one-third) was charged with one-third expenses of marriage, but it was held that he was not liable for the marriage expenses of the daughter of his brother S 1.

Mode of partition and allotment of shares.

Before allotting shares provision must be made out of the joint family property for the payment of joint family debts[1179a], for the personal debts of the father that are not immoral or illegal, for small gifts of affection made by the father, the maintenance of disqualified coparceners and female dependent members and for marriage expenses. Vide Manu VIII. 166 (as to family debts), Yāj. II. 117, Nār. (dāyabhāga 32) and Kāt. 850 (for payment of father's debts and gifts of affection) and 542–43 (for the various legal necessities[1180]). If brothers want to separate and some of them are already married and others are unmarried then provision must be made for the saṁskāras (such as marriages) of the latter from the joint family property. Even Kauṭilya makes provision for the marriage of unmarried brothers and sisters[1181]. Yāj. II. 124, Nār. (dāyabhāga 33), Bṛ. (S. B. E. 33 p. 373 verse 21) lay down that the *saṁskāras* (upanayana, marriage &c.) of younger brothers must be provided for out of paternal wealth[1182].

1179 a. ऋणरिक्थयोः समो विभागः । अर्थशास्त्र III. 5; ऋणं प्रीतिप्रदानं च दत्त्वा शेषं विभाजयेत् । कात्या. 850 q. by स्मृतिच. II. p. 273, व्यव. नि. p. 446 (reads रिक्थं for ऋणं). The verse is quoted in *Ponappa v Pappuvayyangar* 4 Mad. 1 (F. B.) at p. 49.

1180. कुटुम्बार्थमशक्तेन गृहीतं व्याधितेन वा । उपप्लवनिमित्तं च विद्यादापत्कृतं तु तत् ॥ कन्यावैवाहिकं चैव मेतकार्ये च यत्कृतम् । एतत्सर्वं प्रदातव्यं कुटुम्बेन कृतं प्रभोः ॥ कात्या. 542–543 q. by अपरार्क p. 647, स्मृतिच. II. pp. 174–175, वि. र. p. 56. प्रभोः means प्रभुणा.

1181. संनिविष्टसममसंनिविष्टेभ्यो नैवेशनिकं दद्युः । कन्याभ्यश्च प्रदानिकम् । अर्थशास्त्र III. 5; असंस्कृता भ्रातरस्तु ये स्युस्तत्र यवीयसः । संस्कार्या भ्रातृभिश्चैव पैतृकाद्भ्यधनात् । बृह. q. by स्मृतिच. II. p. 269 (तत्राजीवत्पितृकेषु भ्रातृषु), वि. र. p. 492; असंस्कृतास्तु यास्तत्र पैतृकादेव ता धनात् । संस्कार्या भ्रातृभिर्ज्येष्ठैः कन्यकाश्च यथाविधि ॥ बृह. q. by व्य. मयूख p. 106, attributed to व्यास by अपरार्क p. 731, परा. मा III. 508, व्य. प्र. p. 454 (all these read ये तत्र पैतृकादेव ते धनात् or तद्धनात्). संस्कारः परिणयनम् । तत्पूर्वसंस्कृतैरसंस्कृतानां भ्रातृणां कार्यम् । ... अस्मादेव च ज्ञायते साधारणद्रव्याद् विवाह निर्वृत्तिः । विश्वरूप on या. II. 128 (Tri. ed.); असंस्कृतानां विवाहान्तसंस्कारैरसंस्कृतानां भ्रातृणां भगिनीनां च विवाहान्तसंस्कारं कृत्वा पश्चाद्विभागः कर्तव्य इत्यर्थः । मद. पा. p. 648.

1182. This rule, according to Yāj. II. 124, was restricted to brothers only and was not to be extended. If, for example, there is a joint family consisting of several cousins with their sons and the marriages of some of the sons of the cousins are performed at the expense of the joint family, then when a suit is filed for partition no provision can be made for the marriages of other sons of the cousins. Vide *Ramlinga v. Narayan* L. R. 49 I. A. 168. In *Jairam v. Nathu* 31 Bom. 54, it was held that in a partition suit

(*Continued on the next page*)

It has already been seen that a father could during his life time separate his sons from himself and also among themselves[1182a] and that he could assign shares of property to his sons. This power of the father is indicated even in the Tai. S. III. 1. 9. 4 (quoted above in note 1055) which refers to the story of Manu having distributed his wealth among his sons. It is argued by Āp. Dh. S. II. 6. 14. 11 that, as this Vedic text (Tai. S.) does not expressly state that any difference was made by Manu as to the shares of his sons, the division must have been equal, that therefore the preference of the eldest son is forbidden by the śāstras and that when the Tai. S. II. 5. 2. 7 states that " they distinguish the eldest by (a larger share of) the wealth " that is not a rule, but a mere *anuvāda* (a statement of fact) and the Vedic passage only recites what some people do in spite of the rule of the śāstras. The general rule, in the absence of express provision to the contrary, is equal distribution, as stated in Jai. X. 3. 53 (*samaṁ syād-aśrutitvāt*) which is relied upon by the prima facie view in Mit. on Yāj. II. 265. From the Tai. S. it appears that both practices viz. equal division of property among all sons and giving a larger share to the eldest were wellknown in those far-off ages. Āp. II. 6.

(*Continued from the last page*)

between father and sons, a minor son is entitled to have provision made for his thread, betrothal and marriage ceremonies out of the joint family property before the property is partitioned. In *Sundrabai v. Shiv Narayan* 32 Bom. 81 it was held that marriage is one of the saṁskāras which both Yāj. and Nārada refer to. In 38 Mad. 556 the same principle was established. But in *Venkatarayudu v. Sivaramkrishnayya* 58 Mad. 126 and in *Pranjivan v. Motiram* 29 Bom. L. R. 1412 it has been held that the decisions in 38 Mad. 556 and in 31 Bom. 54 must be regarded as overruled by the P. C. decision in L. R. 49 I. A. 168, and in 58 Mad. 126 it was held that an unmarried brother is not entitled to have provision made for his marriage in a decree for partition. It is submitted with great respect that these Madras and Bombay decisions are wrong so far as unmarried brothers are concerned, that they go against the express texts of several writers like Kauṭilya, Nārada, Bṛ., Viśvarūpa, Madanapārijāta (p. 648) and that the Privy Council in 49 I. A. 168 was dealing with the provision for marriages of the children of coparceners and not of brothers.

1182a. It has been held in *Ekallu Subharami v. Ekallu Chenchuraghavan* (1945) 1 M. L. J. p. 151 that the paternal grandfather has no power to separate his grandsons among themselves and that it is only the father who has this power.

14. 7 clearly[1183] states that in some countries gold or black corn or black produce of the earth is the (special) share of the eldest. Almost all the sūtras and smṛtis prescribe the rule of equal division among the sons of wives of the same class as the father (vide Āp. Dh. S. II. 6. 14. 1, Baud. Dh. S. II. 2. 2-3, Manu IX 156, Yāj. II. 117, Viṣṇu Dh. S. 18. 36, Kauṭ. III. 5, Bṛ. S. B. E. 33 p. 371 v. 10, Kāt. 838). Some of these no doubt refer to the special share or provision given to the eldest (called *uddhāra*). Kauṭ. says "the father in a partition during his own life should not give a special share to one out of several sons, nor should he deprive a son of a share without any cause[1184] (such as blindness etc.)." Kāt. 843 says the same thing in almost the same words. But from certain passages when construed literally (such as Yāj. II. 116, Nār. dāyabhāga 15) it appears that the early Indian father often distributed the ancestral wealth among his sons just as he pleased. Nār. (dāyabhāga 15)[1185] says: "When a father has distributed his property amongst his sons that is a lawful distribution for them (and cannot be set aside), whether the share of one be less or greater than or equal to the shares of the rest; for the father is the lord of all". To the same effect is Bṛ. (S. B. E. vol. 33 p. 370 v. 4) who adds that if they try to alter the arrangement (made by the father) they shall be punished. But later on these passages were either held to apply to former ages (V. Mayūkha p. 99 says so) or to the self-acquired property of the father (Mit. on Yāj. II. 114) or were so interpreted as to mean that the partition made by the father could not be annulled if it was legal, but if illegal it could be set aside (Mit. on Yāj. II. 116, Madanaratna, Madanapārijāta p. 646). Nār. (dāyabhāga 16) himself denies authority to the father to give shares to the sons as he pleases

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1183. एकधनेन ज्येष्ठं तोषयित्वा । ... ज्येष्ठो दायाद इत्येके । देशविशेषे सुवर्णं कृष्णा गावः कृष्णं भौमं ज्येष्ठस्य । ... तच्छास्त्रैर्विप्रतिषिद्धम् । मनुः पुत्रेभ्यो दायं व्यभजदित्यविशेषेण श्रूयते । अथापि तस्माज्ज्येष्ठं पुत्रं धनेन निरवसाययन्तीत्येकवच्छ्रूयते । अथापि नित्यानुवादमविधिमाहुर्न्यायविदो यथा तस्मादजावयः पशूनां सह चरन्तीति । ... सर्वे हि धर्मयुक्ता भागिनः । आप. ध. सू. II. 6. 14. 1, 6-7, 10-13.

1184. जीवद्विभागे पिता नैकं विशेषयेत् । न चैकमकारणान्निर्विभजेत । अर्थशास्त्र III. 5 p. 161 ; जीवद्विभागे तु पिता नैकं पुत्रं विशेषयेत् । निर्भाजयेन्न चैवैकमकस्मात्कारणं विना ॥ कात्या. 843 q. by दायभाग I. 84 (p. 56), व्य. प्र. p. 439.

1185. पित्रैव तु विभक्ता ये हीनाधिकसमैर्धनैः । तेषां स एव धर्मः स्यात्सर्वस्य हि पिता प्रभुः ॥ नारद (दायभाग 15); समन्यूनाधिका भागाः पित्रा येषां प्रकल्पिताः । तथैव ते पालनीया विनेयास्ते स्युरन्यथा ॥ बृह. q. by अपरार्क p. 717, स्मृतिच. II. p. 261, व्यव. नि. p. 413, वि. र. p. 468 (ascribes to नारद, बृह. and या.). The व्य. मयूख (p. 99) says 'यद्यपि नारदः—पित्रैव ... प्रभुः—इति तद्युगान्तरपरम्'।

when he is suffering from diseases, is angry (with a son or sons), or is engrossed in pleasures or pursues paths opposed to śāstras.

The eldest son has received special treatment in all ages down to modern times (vide p. 566 above). That treatment took various forms. Sometimes the texts say that the eldest son took the whole estate. Āp. II. 6. 14. 6, Manu IX. 105–107, Nār. (dāyabhāga 5) refer to this view. Manu (IX 105–107) allows the eldest son to take the entire paternal estate, provides that the other sons should depend for their maintenance on the eldest son as on the father, remarks that the eldest by the mere fact of his birth enables the father to free himself from the debt to the ancestors and that therefore he (the eldest) deserves to get from the father the entire estate.[1186]

Another mode of dealing with the privileges of the eldest son was to give him some excellent or valuable article and then to distribute the rest equally. The Tai. S. II. 2. 2. 7 seems to have been understood by Āp. Dh. S. II. 6. 14. 1 and Baud. Dh. S. II. 2. 2–5[1187] in this sense. Manu IX. 114 says that the eldest may get the best of all the items of wealth, whatever is the most eminent and the best of a group of ten cattle. Bṛ. (S. B. E. 33 p. 371 verse 8) is to the same effect. Kauṭ. III. 6 points out that according to Uśanas among the sons born of the same mother, goats shall be the special share of the eldest among brāhmaṇas, horses among kṣatriyas, cows among vaiśyas and sheep among śūdras, that if there be no quadrupeds the eldest was to take an additional share of one-tenth of the whole property excepting precious stones, since he releases his father from fetters (of Hell) by offering śrāddha. Kauṭ. himself holds that the eldest should get the vehicle and ornaments of his father (after the latter's death); the middle-most his bed, seat and the bronze plate from which the father took his meals ; and the youngest should get black grain (like sesame),

1186. Compare the Vedic passages about the three debts owed to gods, ancestors and sages quoted in H. of Dh. vol. II. pp. 270 (n. 621), 425 (n. 1008), 560 (n. 1302).

1187. मनुः पुत्रेभ्यो दायं व्यभजदिति श्रुतिः । समशः सर्वेषामविशेषात् । वरं वा रूपमुद्धरेज्ज्येष्ठः । तस्माज्ज्येष्ठं पुत्रं धनेन निरवसाययन्तीति श्रुतिः । बौ. ध. सू. II. 2. 2–5. निरवसाययन्ति is explained as तोषयन्ति by स्मृतिच. II. p. 260 and आप. also (II. 6. 14. 1) employs the words एकधनेन ज्येष्ठं तोषयित्वा (having satisfied the eldest by giving him an excellent article of wealth). मि. र. p. 467 explains ज्येष्ठं पुत्रं धनेनोद्धरणलक्षणेन निरवसाययन्ति इतरपुत्रेभ्यः पृथक् कुर्वन्ति.

iron, domestic utensils and the bullock cart. Hārīta[1188] says: "at a partition the eldest should get a bull, the most precious wealth, the images for worship and the ancestral house, the other brothers should go out and build new houses or if there be a single house the eldest should get the southern (or best) portion ". This special allotment to the eldest is called *uddhāra* (lit. what is first taken out) in Manu IX. 115-116 and Viṣṇu Dh. S. 18. 37, and Baud. employs the form " uddharet ". There were other methods also prescribed for special distribution of wealth. Gaut. 28. 5 says that the eldest should get one-twentieth of the whole as a special share, a bull and a cow, a cow, a chariot to which horses, asses or mules are yoked and a bull. Manu IX. 112 provides that the special share of the eldest was one-twentieth of the whole property and whatever was the most valuable out of the ancestral property, the middlemost son should get half of this (i. e. one-fortieth part) and the youngest one-fourth of this (one-eightieth of the whole). Manu IX. 117 states that when no valuable items are taken out for the eldest the latter should get two shares, the son next to him one share and a half and the other sons one share each. Vas. 17. 42, Nār. (dāyabhāga 13), Bṛ. (S. B. E. vol. 33 p. 371 verse 9) also give two shares to the eldest, the latter[1189] making it to depend on the possession of learning and good qualities by the eldest. Similarly Nār. (dāyabhāga 12), Bṛ. (S. B. E. vol. 33 p. 370 verse 5) provide[1190] that when the father makes a division during his lifetime he may retain two shares for himself. Śaṅkha-Likhita allowed this right to the father only when he had an only son.[1191]

1188. विभजिष्यमाणे गवां समूहे वृषभमेकधनं वरिष्ठं वा ज्येष्ठाय दद्युर्दैवतं गृहं च इतरे निष्क्रम्य कुर्युः । एकस्मिन्नेव दक्षिणं ज्येष्ठायानुपूर्व्यमितरेषाम् । हारीत q. by वि. र. p. 471. Vide *Damodardas v. Uttamram* 17 Bom. 271, 288, for the eldest son being given the custody of the family idol and the property appertaining to it.

1189. जन्मविद्यागुणज्येष्ठो व्यंशं दायादवाप्नुयात् । समांशभागिनस्त्वन्ये तेषां पितृसमस्तु सः ॥ बृह. q. by दायभाग II. 42 p. 42, वि. र. p. 480, स्मृतिच. II. p. 266, परा. मा. III. p. 490. व्यवहारसार quotes first half as कात्यायन's (p. 218).

1190. जीवद्विभागे तु पिता गृह्णीतांशद्वयं स्वयम् । बृह. q. by दायभाग II. 35 p. 36, स्मृतिच. II. p. 261, व्यव. नि. p. 414, व्य. प्र. p. 444, वि. र. p. 465.

1191. स यद्येकपुत्रः स्याद् द्वौ भागावात्मनः कुर्यात् । शङ्खलिखित q. by वि. र. pp. 465, दायभाग II. 59 pp 47-48, अपरार्क p. 717 (attributes to शङ्ख.). The दायभाग does not take the word एकपुत्र as a बहुव्रीहि but explains it as meaning एकस्य पुत्रः (i. e. औरस and not क्षेत्रज), while स्मृतिच. explains it as गलितवयस्क. वि. र. p. 466 says 'पारिजातस्तु एकपुत्रः ज्येष्ठपुत्र इत्याह । भाष्यकारस्तु पुत्रशब्दं न पठितवान् । यद्येकाकी स्यादिति पठितवान् । यद्येकाकी पत्नीविरहितोपि स्यात्तदाप्यंशद्वयं गृह्णीयात् । सपत्नीकश्चेत्सामत्यपरेणांशेन तोषयेत् । '. The भाष्यकार seems to be that of the शङ्खलिखितसूत्र. The मदनरत्न (folio 91 b) refers to पारिजात's explanation (एकशब्दोत्र श्रेष्ठवाची). The व्य. प्र. p. 444 criticizes दायभाग.

In course of time there was a revulsion of popular feeling against allowing a special share to the eldest son and even to the father. Kāt. (838)[1192] states that where the parents and brothers divide the whole joint property in equal shares that is a just (or legal) division. Br. (S. B. E. 33[1193] p. 370 verse 2) declares that the father and sons are entitled to equal shares in lands and houses that are ancestral, but in property acquired by the father the sons cannot claim a share against the will of the father. The V. M. (p. 95) remarks on this that it follows impliedly that in the wealth acquired by the grand-father or other (remoter) ancestor, the sons can demand a partition even against the father's desire.

According to Manu IX. 125,[1194] if all wives of a person are of the same caste, then the son who is born first (even from a wife who is junior i. e. married later) is the eldest son and that among twins the one that is born first is the eldest (verse 126), just as in the Subrahmaṇyā[1195] texts the invocation of Indra is made by the name of the first-born. But if he has wives of different castes then the son of the wife of his own caste is the eldest (though born later) and the son of a wife of a lower caste though born first would be postponed. Devala[1195a] quoted in V. R. p. 477 and V. C. p. 128 says the

1192. सकलं द्रव्यजातं यद्भागैर्गृह्णन्ति तत्समैः । पितरौ भ्रातरश्चैव विभागो धर्म्य उच्यते ॥ कात्या. 838 q. by स्मृतिच. II. p 260, मदनरत्न (folio 91 b), व्य. मयूख p. 98, व्य. प्र. p. 448 which last remarks 'मदनरत्नधृतकात्यायनवचनात्तु सर्वेषां भ्रातृणां पितापुत्राणां च समांशग्रहणमेव मुख्यमिति प्रतीयते। ... अत एव योगीश्वरोपि सर्वे वा स्युः समांशिनः इति सर्वपदं प्रायुङ्क्त । अन्यथा समांशिनो वा कुर्वीत सुतानिति वदेत् ।'

1193. क्रमागते गृहक्षेत्रे पितापुत्राः समांशिनः । पैतृके न विभागार्हाः सुताः पितुरनिच्छया ॥ बृह. q. by व्य. मयूख p. 95 which adds 'अर्थात्पितामहाद्यर्जिते तदनिच्छयापि विभागार्हा इत्यर्थः ।'

1194. सदृशस्त्रीषु जातानां पुत्राणामविशेषतः । न मातृतो ज्यैष्ठ्यमस्ति जन्मतो ज्येष्ठता मता ॥ मनु. IX. 125; the वि. चि. p. 128 after quoting this verse remarks 'तेन नानावर्णासु भार्यासु पतिसवर्णायां पश्चाज्जातो ज्येष्ठ इत्यर्थः' and निर्णयसिन्धु III. पूर्वार्ध p. 251 says 'तेन कनिष्ठायां पूर्वजात एव ज्येष्ठो न ज्येष्ठायां पश्चाज्जात इत्यर्थः'.

1195. For Subrahmaṇyā invocation, vide H. of Dh. vol. II pp. 1144-45 and note 2550 as to how the names of descendants by the seniority of birth are included in that invocation.

1195a. जन्मज्येष्ठेन चाह्वानं सुब्रह्मण्यास्वपि स्मृतम् । यमयोश्चैव गर्भेषु जन्मतो ज्येष्ठता मता ॥ (sic) — वहिर्वर्णेषु चारित्र्याश्रमयोः पूर्वजन्मतः । यस्य जातस्य यमयोः पश्यन्ति प्रथमं मुखम् । सन्तानः पितरश्चैव तस्मिञ्ज्यैष्ठ्यं प्रतिष्ठितम् ॥ देवल q. by वि. र. 477, वि. चि. p. 128, निर्णयसिन्धु III. पूर्वार्ध p. 251. The वैजयन्ती on विष्णुधर्मसूत्र 18. 37 correctly points out that the word द्वौ तदा भवतो गर्भौ सूतिवेशविपर्ययात् are quoted by Śrīdhara (in his comment on the भागवत).

same as Manu IX. 125. Manu IX. 123 and Gaut. 28. 16 appear to conflict with Manu IX. 125 and probably refer to some other ancient text or opinion. The V. Mayūkha (pp. 97–98) notes that in some medical works and in the (commentary on the) Bhāgavata Purāṇa III. 17. 18, it is said that among twins the one born later is deemed to be the elder, but that this, being opposed to the indications contained in the Vedic Subrahmaṇyā formula and in Manu IX. 126, has no bearing here (but only in medical matters). The Nirṇayasindhu (III Pūrvārdha p. 251) makes a reference to the Bhāgavata.

General feeling went so much against allowing a special share to the eldest or allowing the father to make an unequal division among his sons, that such action was condemned in the same breath with *niyoga*,[1196] or the sacrifice of the cow called Anubandhyā. It is very instructive to follow the agruments of the Mit. and other writers on this point. The oldest extant commentator, Medhātithi, on Manu IX. 112 shows that even before his time there were writers that held that the texts of Manu on *niyoga* and on the special share to the eldest at a partition were in vogue only in bygone days and not in their days, that the rules of the smṛtis were conditioned by time and country, just as *sattras* of long duration, though declared in the Vedic texts committed to memory by Vedic students, were not being performed and just as Manu (I. 85) declares that the dharmas were different in different *yugas*. But Medhātithi[1197] does not accept this reasoning, denies that different dharmas are prescribed for different *yugas* and holds that there is no restriction as to the dharmas to be performed in a country. Though sattras may not be performed now still it is possible to perform them. The argument of the Mit. on Yāj.

1196. For *niyoga* vide H. of Dh. vol. II pp. 599–607. The anubandhyā (or anūbandhyā, a barren cow) was sacrificed after the *Udayanīyā iṣṭi* performed at the end of the Agniṣṭoma. Even in the times of the sūtras (such as Āp. Srauta XIII. 24. 10 and Kāt. Srauta X. 9. 14–15) *āmikṣā* (curds mixed in heated milk) was optionally offered. Vide. H. of Dh. vol. II. pp. 1200–1201.

1197. इयमुद्धारनियोगस्मृतिरतिक्रान्तकालविषया न त्वद्यत्वे । अनुष्ठेये नियतकालत्वात्स्मृतीनामिति केचित् । ... तस्मादुद्धारनियोगगोवधस्मृतय उपदिष्टा नानुष्ठेयाः । तदेतदपेशलम् । मेधातिथि on मनु IX. 112.

II. 117 is briefly as follows[1198] :—Unequal division though found in the śāstras (e. g. Manu IX. 105, 112, 116, 117, Yāj. II. 114) should not be practised because it has come to be condemned (or has become hateful to) by the people, since there is the prohibition (in Yāj. I. 156) that an action, though prescribed in the śāstras, should not be performed when it has come to be condemned by the people, since such an action does not lead to the attainment of Heaven. For example, though Yāj. I. 109 prescribes the offering of a big ox or a goat to a learned brāhmaṇa guest, it is not now practised because people have come to hate it; or just as, although there is a Vedic text laying down the sacrificing of a cow " one should sacrifice a barren cow called anubandhyā for Mitra and Varuṇa ", still it is not done because people condemn it. And it has been said " just as the practice of *niyoga* or the killing of the anubandhyā cow is not now in vogue, so also division after giving a special share (to the eldest son) does not now exist ". Āpastamba also (II. 6. 14. 1-14) prescribes equal division, refers to the view of some that the eldest takes the whole estate, shows that allotting a special share to the eldest is the view of some and refutes it as opposed to the śāstras by quoting the Vedic text " Manu divided his wealth among his sons ". Therefore unequal division though found in the śāstra should not be practised as it is opposed to popular sentiments and to the Veda and so Yāj. (II. 117) gives the restrictive rule that in partitioning there must be equal division. The Sm. C. (II. p. 266) tells us that Dhāreśvara also did not discuss passages like Manu IX. 112 since he said that the practice (of uddhāravibhāga) had been altogether given up by the people[1199].

1198. अयं विषमो विभागः शास्त्रदृष्टस्तथापि लोकविद्विष्टत्वान्नानुष्ठेयः । अस्वर्ग्यं लोकविद्विष्टं धर्म्यमप्याचरेन्न तु-इति निषेधात् । यथा-महोक्षं वा महाजं वा श्रोत्रियायोपकल्पयेत्-इति विधानेपि लोकविद्विष्टत्वादननुष्ठानम् । यथा वा-मैत्रावरुणीं गां वशामनुबन्ध्यामालभेत-इति गवालम्भनविधानेपि लोकविद्विष्टत्वादननुष्ठानम् । उक्तं च—यथा नियोगधर्मो नो नानुबन्ध्यावधोपि वा । तथोद्धारविभागोऽपि नैव संप्रति वर्तते ॥-इति । ... तस्माद्विषमो विभागः शास्त्रदृष्टोपि लोकविरोधाच्छ्रुतिविरोधाच्च नानुष्ठेय इति सममेव विभजेरन्निति नियम्यते । मिता. on या. II. 117. The verse यथा नियोग० is attributed to the स्मृतिसंग्रह by the मदनरत्न (folio 92a) and व्य. प्र. p. 443 and to the संग्रह by स्मृतिच. II. p. 266 which reads ०धर्मोंऽद्य and explains अद्यसंप्रतिशब्दौ कलियुगमभिसन्धायोक्तौ. The व्यव. नि. p. 414 ascribes it to प्रजापति, the परा. मा. III. 492, व्यवहारसार p. 219, and others attribute it to संग्रहकार.

1199. एतदेव धारेश्वरेणोक्तम् । ज्येष्ठस्य विंश उद्धार इत्येवमादीनि वाक्यानि न विचार्यन्ते लोकेनात्यन्तपरित्यक्तत्वात् । कलाविति शेषः । द्वापरादावनुष्ठेयत्वेनात्यन्तपरित्यागाभावात् । स्मृतिच. II. p. 266.

The Sm. C. finds fault with Viśvarūpa for saying that just as the offering of an ox or a goat to a learned brāhmaṇa is not practised because the practice of the śiṣṭas is against it, so *uddhāra* is not practised. It says that when there is a conflict between a smṛti text and *śiṣṭācāra*, the latter is the weaker (of the two) and cannot refute the smṛti text as laid down by Vas. I. 4-5. Further not offering a bull cannot be said to be śiṣṭācāra, but it is really the absence of śiṣṭācāra. The Sm. C. finds fault with the Mit. for saying that people have come to condemn a special share for the eldest. It says that, on the contrary, if a special share is given to the eldest who is endowed with learning, good qualities or holy actions then people commend such a procedure. The Madanaratna[1200] quotes the verse "yathā niyoga &c.," and a verse from the Ādipurāṇa. The V. P.[1201] (pp. 442-443) generally follows the Mit., but criticizes it by saying that there is no real *śruti-virodha* (opposition to a Vedic text). If that were so, as śruti (the Veda) is promulgated for all ages, unequal division would be forbidden in all ages and it would follow that the particular śruti passages speaking of

1200. एवमादीनि विषमविभागप्रतिपादकानि मन्वादिवचनानि कलियुगव्यतिरिक्त-विषयाणि । अत एव कलौ विषमविभागनिषेध आदिपुराणे । ऊढायाः पुनरुद्वाहं ज्येष्ठांशं गावधं तथा । कलौ पञ्च न कुर्वीत भ्रातृजायां कमण्डलुम् ॥ ज्येष्ठांशं जन्मविद्यादिकृतज्यैष्ठ्यनिबन्धनमंशम् । स्मृतिसंग्रहेपि । यथा नियोगधर्मो ... संप्रति वर्तते ॥ इति । संप्रति कलियुगे । मदनरत्न (folio 92 a). The verse ऊढायाः is quoted in the Sm. C. (II. p. 266) also from a पुराण (without naming it). Rao Bahadur Rangaswami Aiyangar (in Introduction to V. Nir. XLIX-LI) wrongly thinks that by स्मृतिसंग्रह is meant the व्यव. नि. of वरदराज which quotes the verse यथा नियोगधर्मो नो from प्रजापति. He failed to note that the verse यथा नियोगधर्मो नो &c. is quoted by the Mit. on Yāj. II. 117, the Mitākṣarā being one of the authorities quoted in the V. Nir. Therefore the स्मृतिसंग्रह from which the verse is said to have been taken is the work of that name also called संग्रह.

1201. अस्वर्ग्यं लोकविद्विष्टं धर्म्यमप्याचरेन्न तु । इति योगीश्वरवचनात् । अत्र लोकपदेन युगमुच्यते । युगान्तरे धर्म्यमपि युगान्तरे यद्विद्विष्टं प्रतिषिद्धं तन्नाचरेदित्यर्थः । अन्यथा धर्म्यत्वास्वर्ग्यत्वयोर्व्याघातः । शास्त्रविहिते तदभिज्ञविद्वेषो बाधित एव । तदनभिज्ञपामरजनविद्वेषस्तु नास्वर्ग्यत्वापादकोऽग्नीषोमीयादिहिंसादावतिप्रसङ्गादित्यादि दूषणं स्यात् । व्य. प्र. p. 442. It should be noted that विश्वरूप reads the verse of Yāj. as अस्वस्तं लोकविद्विष्टं and takes अस्वस्त as (अ + सु + अस्त past p. participle of अस्) 'अस्वस्तम् असुगतम् । असुपरिनिष्ठितमित्यर्थः'. He then notices another reading अस्वन्तं which means अशोभनान्तम् (not bringing about welfare in the end). He further explains 'लोकं कर्मसाध्यं ये जानन्ति ते लोकविदो मन्वादयः तैर्द्विष्टं नाचरेत् ।'.

unequal division are without authority, since it (unequal division) could not have been practised in other ages also (but as a matter of fact it was); besides Baud. sets out another Vedic text which mentions unequal division. The V. P. desiring to guard against the rather wide statement that whatever is condemned by the people should not be practised holds that the word " loka " in Yāj. I. 156 means " yuga "; otherwise there would be confusion about what is proper conduct and what does not lead to Heaven. The condemnation by low or ordinary people who are quite innocent of śāstras cannot make an action incapable of leading to Heaven, since such people might condemn the *hiṁsā* (slaughter) of the animal offered to Agni and Soma. The above discussion illustrates how practices once recognized by Vedic passages and by the people gradually fell into disuetude and how reason and the common sense of ordinary people asserted themselves even against Vedic and smṛti texts. The Mit. is very clear in its statement that whatever comes to be hated by the people in general should not be practised, even though it was once practised and has the support and authority of Vedic and smṛti texts behind it, Those who desire change in social customs and the practices of the people in various directions rely on this text of Yāj. and on similar texts[1202] of Manu IV. 176 and Viṣṇu Dh. S. 71. 85 and on the Mit. for authority. Orthodox writers like Mitramiśra therefore have to twist plain words like " loka ", since they cannot tolerate the idea that common people can have anything to say in what these writers believe to be the injunctions of the śāstra. Instead of candidly saying that ancient practices came to be modified by common people, writers like Mitramiśra say that common people should not be listened to in these matters, that each *yuga* has its own peculiar practices and that common people have no authority to change śāstric practices prescribed by the texts for a particular age. It is sheer quibbling to say that not offering a bull is not śiṣṭācāra, but absence of śiṣṭācāra; what is clear is that common people abhorred the practice of niyoga and the killing of a cow in a sacrifice and writers of sūtras and smṛtis fell into line with them and prohibited such practices in the

1202. परित्यजेदर्थकामौ यौ स्यातां धर्मवर्जितौ । धर्मं चाप्यसुखोदर्कं लोकविक्रुष्टमेव च ॥ मनु. IV. 176; धर्मविरुद्धौ चार्थकामौ । लोकविद्विष्टं च धर्ममपि (परिहरेत्) । विष्णुधर्मसूत्र 71. 84-85; जनद्वेषे सति शुभ्रकर्म न कुर्यात् । बार्हस्पत्य-अर्थशास्त्र I. 95.

Kali age, though they were either permitted or (even) enjoined by the Vedic texts ; that is, the voice of the common man or his revolt was allowed to prevail over the word of the sacred Veda.

Though the assignment of a larger share to the eldest son or giving him the whole property ceased to be generally prevalent, vestiges of it are still found. There are certain estates in the nature of *zamindaries* or a *rāj* that are impartible and descend by the rule of primogeniture to a single heir. Vide *Baboo Gunesh Dutta v. Maharaja Moheshur* 6 Moo. I A. 164, *Neelkisto v. Beer Chunder* 12 Moo. I. A. 523, *Mohesh v. Satrughan* 29 I. A. 62, *Ram Nundun v. Maharani Janki* 29 I. A. 178 for examples of impartible estates. Sometimes by custom certain estates such as Deshmukh and Deshpande *vatans* have been held to be impartible. Vide *Ramrao v. Yeshvantrao* 10 Bom. 327 and *Gopalrao v. Trimbakrao* 10 Bom. 598. In certain other cases a larger share (called *jyeṣṭhāṁśa* or *moṭap*) has been allowed by custom to the eldest son at a partition. Vide *Manikchand v. Hiralal* 20 Cal. 45 (P. C.), *Prithisingji v. Umedsingji* 6 Bom. L. R. 98, *Malubhai v. Sursangji* 7 Bom. L. R. 821.

The following propositions may be laid down about the allotment of shares on a partition: (1) When there is a partition between a father and his sons each son takes a share equal to that of the father ; (2) where the partition is only between brothers all of them share equally ; (3) on the death of a member leaving male issue his right to a share on partition passes to and is represented by his male issue ; (4) when there is a partition among members who are uncles and nephews or cousins, the allotment is *per stirpes* (according to the stock) as regards each branch and *per capita* among the members of the same branch. This rule is expressly laid down[1203] by Kauṭ-

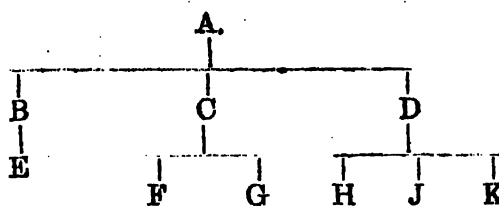
1203. अपितृका बहवोपि च भ्रातरो भ्रातृपुत्राश्च पितुरेकमंशं हरेयुः । सोदर्याणामनेकपितृकाणां पितृतो दायविभागः । अर्थशास्त्र III, 5 ; अनेकपितृकाणां तु पितृतो भागकल्पना । या. II. 120. This is read as प्रमीतपितृकाणां in the स्मृतिच. II. p. 278, व्य. प्र. p. 449 and a few other digests, Vide n. 1068. समवेतैस्तु यत्प्राप्तं सर्वे तत्र समांशिनः । तत्पुत्रा विषमसमाः पितृभागहराः स्मृताः ॥ बृह. q. by अपरार्क p. 727, स्मृतिच. II. p. 278, व्यव. नि. p. 424, वि. र. pp. 481–82; अविभक्तेऽनुजे प्रेते तत्सुतं रिक्थभागिनम् । कुर्वीत जीवनं येन लब्धं नैव पितामहात् ॥ लभेतांशं स पित्र्यं तु पितृव्यात्तस्य वा सुतात् । स एवांशस्तु सर्वेषां भ्रातॄणां न्यायतो भवेत् । लभेत तत्सुतो वापि निवृत्तिः परतो भवेत् ॥ कात्या. q. by अपरार्क p. 727, स्मृतिच. II. p. 278, वि. र. p. 482, व्य. प्र. p. 449. These verses are

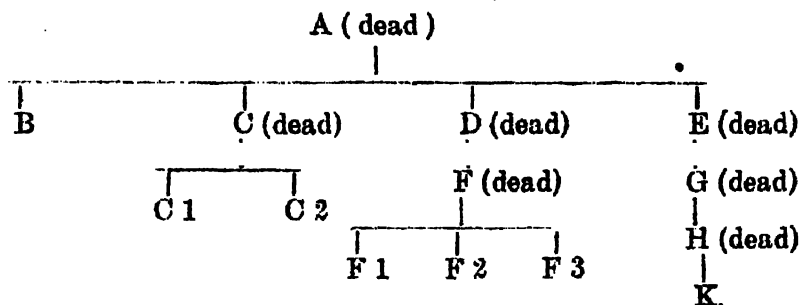
(*Continued on the next page*)

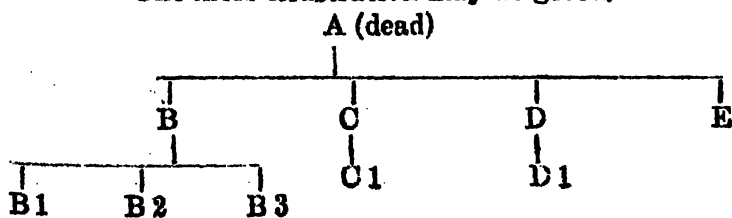
III. 5., Yāj. II. 120, Bṛ. (S. B. E. 33 p. 372 v. 14) and Kāt. (855–56). This last rule requires to be explained and illustrated. Yāj. II. 120 concisely states: "in the case of those who claim through different fathers, the assignment of shares is according to the fathers". Kāt. says: "if an undivided younger brother dies, he (the elder brother or the other brother) should make the son of the former a partaker of the ancestral wealth, when he has not obtained from his grandfather livelihood (i. e. share of heritage); he should obtain from his paternal uncle or the uncle's son the share which his father would have got (if alive); that very share would be the share according to law of all the brothers (who are the sons of the deceased brother). Or even a son (of that son of the brother dying) would obtain that share; beyond this (i. e. beyond the grandson of the deceased brother) there is cessation (of the right to demand a share)". It was stated that in the ancestral property (*paitāmaha dravya*) sons and grandsons equally have rights by birth, but in the case of the grandsons assignment of shares is made to them through their

(*Continued from the last page*)

lucidly explained in *Moro v. Ganesh* 10 Bom. H. C. R. 444 (at pp. 461, 466–67) and are quoted in *Debi Parshad v. Thakur Dial* 1 All. 105 (F. B.) at p. 111. On these verses of कात्यायन the व्य. मयूख (p. 101) says that they do not refer to undivided coparceners, but rather to those who are re-united. Why it says so is not clear. The first verse of Kāt. starts with the words अविभक्तेनुजे and therefore the topic is that of undivided family and there is no express indication that it has changed to reunion in the following verse. The reason appears to be that नीलकण्ठ takes the verse of देवल 'अविभक्तविभक्तानां कुल्यानां वसतां सह । भूयो दायविभागः स्यादाचतुर्थादिति स्थितिः' as referring to re-union on account of the word भूयः in it. The words आचतुर्थात् (in देवल) and निवृत्तिः परतो भवेत् (in कात्यायन) mean the same thing and so नीलकण्ठ probably thought that they referred to the same subject. The interpretation of देवल (by नील०) is forced and is opposed to the explanation of most works like the विवादरत्नाकर (p. 482) and व्य. प्र. p. 449, स्मृतिच. II. p. 279. They take अविभक्तविभक्तानां as a *dvanda* compound meaning 'those who are undivided' and 'those who are divided', while नील० takes that word to mean 'those who being once undivided are divided' (i. e. as a कर्मधारय). सह वसतां—acc. to the other digests means either 'who dwell together' (in the case of the undivided) and 'who reunite' (in the case of the divided). 'अविभक्तानामेव वा विभक्तानां सह वसतां संसृष्टानां वा पुनर्विभागो भ्रातृतत्सुततत्सुतपर्यन्तमेव तत्सुतात्चतुर्थान्निवर्तेत इति' वि. र. p. 482; बीजिचतुर्थमभिव्याप्य दायभाग इत्यर्थः । विभक्तानामपि संसर्गं विना सहवासे सति इयं व्यवस्था । वसतां सहेति वचनात् । व्य. प्र. p. 449. Vide *Moro v. Ganesh* 10 Bom. H. C. R. p. 444 at pp 465–468 for several objections to the explanation of Devala's verse offered by Nilakaṇṭha.

fathers and not in their separate individual capacity. This may be illustrated by some examples.

Suppose A, B, C, D, E, F, G, H, J, K formed a joint family and that A, B, C, D all die without making a partition, B leaving one son E, C leaving two sons F, G, and D dying leaving three sons H, J, K. If E, F, G, H, J, K want to partition, then these six will not take one-sixth each, but the partition will be through their fathers i. e. E the only son of B will take one-third, F and G (the two sons of C) will take one-third (i. e. each will take one-sixth) and H, J, K will together take one-third (i. e. one-ninth each). The same will be the result if only A, B, C die, leaving D to K. Here D, the uncle of E, F, G, along with his three sons H, J, K will take one-third only.

To take another example.

Suppose A the head of the joint family dies leaving a son B, two grandsons C1 and C2, three great-grandsons F1, F2, F 3, and one great-great-grandson K. Here K cannot demand a share, as he is beyond 4th from A the common ancestor A that died last. Therefore the joint property will be divided *per stirpes* into three parts, B taking one-third, C 1 and C 2 together taking one-third and F 1, F 2, F 3 together taking one-third.

One more illustration may be given.

Suppose A, the head of a Hindu joint family, dies leaving four sons, B, C, D, E and five grand-sons, B 1, B 2, B 3, C 1, D 1 and then B dies. Then B3 receives his share, which is one-third of one-fourth (= one-twelfth), goes out of the family and the rest continue joint. Then C dies, then D, then E, and then B 2. Then B 1 sues C 1 and D 1 for his share. Here if we again apply the rule of *per stirpes* division, the property that remained at the date of the suit of B 1 will be divided into three parts and B 1, C 1 and D 1 (who represent three stocks, B, C, D) will each get one third of that property. This was so decided in *Pranjivandas v. Ichharam* 39 Bom. 734. The Madras High Court, however, holds that the rule of *per stirpes* applies only when all the coparceners desire a partition at the same time and that if only some members separate at one time and others on a later occasion, regard should be had to the share allotted at the first partition in computing the share to be allotted at the second partition. That is, according to the Madras High Court in the above case B 1 will be entitled to one-third minus one-twelth (which latter was allotted to B 3 when he left the family). The Madras High Court says that its views are based not on strict principles of Hindu Law, but on necessary considerations of equity. Vide *Manjanatha v. Narayana* 5 Mad. 362 and *Narayana v. Shankar* 53 Mad. 1 (F. B. at p. 6).

Manu (IX. 47) emphatically states:[1203a] "once is a partition made, once is a maiden given in marriage, once does a man say 'I shall make a gift of this or that'; these three are done only once by the good". This means that a partition once made is final and cannot ordinarily be reopened. But there are exceptions to this rule. One viz. about the posthumous son born after partition has already been mentioned above (pp. 595–597). Bṛ.[1204] (S. B. E. 33 pp. 373–74 verses 24–26) says, "If a man

1203a. सकृदंशो निपतति सकृत्कन्या प्रदीयते । सकृदाह ददामीति त्रीण्येतानि सतां सकृत् ॥ मनु IX. 47 which is the same as नारद (स्त्रीपुंसयोग 28) and वनपर्व 294. 26.

1204. गोत्रसाधारणं त्यक्त्वा योऽन्यदेशं समाश्रितः । तद्वंश्यस्यागतस्यांशः प्रदातव्यो न संशयः ॥ तृतीयः पञ्चमश्चैव सप्तमो वापि यो भवेत् । जन्मनामपरिज्ञाने लभेतांशं क्रमागतम् ॥ यं परम्परया मौलाः सामन्ताः स्वामिनं विदुः । तदन्वयस्यागतस्य दातव्या गोत्रजैर्मही ॥ बृह. q. by दायभाग VIII. 2–3, स्मृतिच. II. pp. 307–308, दायतत्त्व p. 180, वि. र. pp. 540–541. The वि. चि. p. 132 seems to ascribe these to कात्यायन. For मौलाः vide ये तत्र पूर्वं सामन्ताः पश्चाद्देशान्तरं गताः । तन्मूलत्वात्तु ते मौला ऋषिभिः संप्रकीर्तिताः ॥ कात्या. q. by मिता. on या. II. 151, अपरार्क p. 760. Kāt. derives मौल from मूल and states that they were once neighbours but later migrated and hence they are so called.

leaving the country common to himself and his co-sharers goes to another country, his share must undoubtedly be given to his descendant when the latter comes back to the original country. Whether he (the descendant) be the third or fifth or even seventh in descent (from the man who left the country) he would get the share that descends hereditarily provided his birth and family name are ascertained. The *gotrajas* (agnatic members of the family) should allow (a share in the ancestral) lands to the descendant of a man whom the *maulas* and neighbours know to be a co-owner (in the lands) by descent, when he comes (after a partition) to demand his share". The V. R. explains[1205] that the rule of Devala (given above) about a claim to a share being allowed up to the fourth applies when all the members stay together in the same place or country, while the above rule of Bṛ. allowing even the seventh in descent to claim his share after a partition has taken place applies where such descendant and his forefathers had migrated to a distant land. These rules of Bṛ. indicate that, even after a long time, a descendant could claim his share in a joint family estate and no bar of limitation was allowed.

Another rule is that where some property of the joint family had been fraudulently concealed by one member and was discovered afterwards, or where some property was left out from partition either through mistake or accident, such property should be divided according to their shares among the persons who made the first partition. In this case there is no reopening of the partition once made, but there is another partition; Manu IX. 218, Yāj. II. 126, Kauṭ. III. 5 and Kāt. 885-86 lay down[1206] this. Kāt. says: ' If (joint) wealth was concealed, but

1205. यस्त्वा चतुर्थाद्विभक्तविभक्तानामित्यादिदेवलोक्तनियमः स सहवासाद्वा । अयं तु दूरदुर्गमवासाद्वाविरयविरोधः । वि. र. p. 541. The स्मृतिच. II. p. 308 states that the last verse applies only to lands (i. e. a partition can be reopened only as to immovable property). तद्वनेन चिरप्रोषितवंश्येन समन्ताद्वासिभिर्मौलैरात्मज्ञापनपूर्वकं भागग्रहणं कार्यम्। दायभाग VIII. 4. Compare Art. 127 of the Indian Limitation Act.

1206. दुर्विभक्तमन्योन्यापहृतमन्तर्हितमविज्ञातोत्पन्नं वा पुनर्विभजेरन् । अर्थशास्त्र III. 5; प्रच्छादितं यदि धनं पुनरासाद्य तत्समम् । भजेरन् भ्रातृभिः सार्धमभावे हि पितुः सुताः ॥ अन्योन्यापहृतं द्रव्यं दुर्विभक्तं च यद्भवेत् । पश्चात्प्राप्तं विभज्येत समभागेन तद्भृगुः ॥ कात्या. 885-886 q. by अपरार्क pp. 732-733 (which reads last half as हृतं नष्टं च यल्लब्धं मायुक्तं च पुनर्भजेत्), स्मृतिच. II. pp. 308-309, दायभाग XIII. 4. p. 221, वि. र. 526. विभजेरन्निति वदता येन दृश्यते तेनैव न ग्राह्यमिति दर्शितम् । मिता. on या II. 126; पूर्वं यथा यस्य विभागकल्पना कृता तत्समानैव कार्या न पुनरपहर्तुरपहर्तृतया अल्पभागो दातव्यो न दातव्य एव वेति समतां नयेदित्यस्यार्थः । दायभाग XIII. 2.

is afterwards discovered, the sons should divide it equally with their brothers in the absence of the father (i. e. even after his death). Whatever is concealed from each other (by the co-sharers) or what was divided in an unjust manner and whatever was recovered (such as debts) after (partition) should be partitioned in equal shares. This is the view of Bhṛgu'.

In the Ait. Br. (VI. 7)[1207] it is said: 'He who deprives a person entitled to a share of his share, him he (who is deprived) punishes (or destroys). If he does not punish (or destroy) him (the depriver), then he punishes his son or grandson; but he does punish him'. Manu IX. 213 declares that even the eldest brother who through greed deprives his younger brothers (of their shares) ceases to be the eldest (i. e. forfeits his position as the eldest), is deprived of his (special) share (as eldest) and should be punished by the king. From these passages it follows that fraudulently concealing joint property or depriving a person of his share is condemned. This leads on to a divergence of views among commentators and digests. If a man conceals joint property at a partition, is he a wrongdoer or not? What he conceals is partly his own. Therefore the Dāyabhāga[1208] (XIII. 8) holds that there is no theft in this case, since a thief is commonly understood to be one who knowing that some thing belongs to another, makes it his own without any ground for so doing; while a co-sharer cannot be said to be no owner at all of the joint property. The Dāyabhāga (XIII. 11-12) says that Viśvarūpa and Jitendriya both held the same opinion that even if technically it may be called theft, still there is no sin attaching to it as smṛtis allow him also who conceals joint property to share in it at the subsequent partition. The Vivādaratnākara (p. 526) states that Halāyudha also held the opinion that in suppressing some joint property the co-sharer did not incur the sin of theft. On the other hand the Mit., Aparārka (p. 732), V. P. p. 555 hold that in view of Manu IX. 213

1207. यो वै भागिनं भागान्नुदते चयते वैनं स यदि वैनं न चयतेऽथ पुत्रमथ पौत्रं चयते त्वेवैनमिति। ऐ. ब्रा. VI. 7. This is cited as गौतम's in the मिता. on या. II. 126, in the व्य. म. p. 131. The परा. मा. III. p. 566, स. वि. p. 438, व्य. प्र. 555 correctly refer to it as श्रुति.

1208. तदुक्तं विश्वरूपेणापि। अतस्तस्करदोषो नास्तीति यथाशास्त्रभागसामर्थ्यात् स्तेनशब्दार्थानिष्पत्तेरित्यभिप्रायः। ... सत्यपि वा स्तेयेऽपहर्तुरपि विभागवचनदर्शनान्न स्तेयदोषः। अन्यथा सुवर्णादिनिह्नवे पतितस्य भागो न स्यात्। दायभाग XIII. 11 and 13 pp. 224-225.

(which declares even the eldest as punishable by the king if he deprives his younger brothers of their due share) and the Ait. Br. there is the fault of theft in case a co-sharer fraudulently conceals joint property. The Mit. and V. P. further rely upon an example derived from the Pūrvamīmāṁsā in support of their view. When a *caru* (boiled food) of *mudga* pulse is prescribed and mudgas are not available, some substitute must be employed just as when rice is not available *nīvāra* grain may be employed. The parts of māṣa resemble those of mudga and some one may plausibly say that in the absence of mudgas, a caru of māṣas may be used. To this Jai. VI. 3. 20[1209] replies that, since *māṣas*, *varakas* and *kodravas* are forbidden as being unfit for use in sacrifices, one cannot take parts of māṣas as substitute for parts of mudgas though both may be so similar as not to be easily distinguishable. So the general prohibition against depriving another of his wealth holds good even in the case of goods that belong jointly to oneself and to others. The Dāyabhāga (XIII. 16 pp. 227–228) tells us that a predecessor of it named Bālaka relied on this very *nyāya* of Jaimini and finds fault with him. It should be noted however that Kāt. (888) recommends that the king[1210] even if a complaint be lodged about fraudulent suppression by a co-sharer should not use force against the fraudulent suppressor but should make him give up the concealed property by persuasion or trick. Br. and Kāt.[1211] declare that if there is a suspicion that some joint wealth has been concealed by a co-sharer, the *kośa* ordeal may be resorted to.

1209. प्रतिषिद्धं चाविशेषेण हि तच्छ्रुतिः । जै. VI. 3. 20 : अथ यत्प्रतिषिद्धं अयज्ञिया वै वरकाः कोद्रवाः अयज्ञिया वै माषा इति । किं तच्छ्रुतद्रव्यापचारे प्रतिनिधातव्यमुत नेति । किं प्राप्तं प्रतिनिधेयमिति । ... एवं प्राप्ते ब्रूमः । प्रतिषिद्धं च न प्रतिनिधातव्यमिति । अविशेषेण ह्येतदुच्यते न यज्ञार्हा माषा वरकाः कोद्रवाश्चेति । यज्ञसम्बन्ध एषां प्रतिषिध्यते । शबर; यथा मौद्गे चरौ विपन्ने सदृशतया माषेषु अयज्ञिया वै माषा इति निषेधो न प्रविशति मुद्गावयवबुद्ध्या गृह्यमाणत्वादिति पूर्वपक्षिणोक्ते मुद्गावयवेषु गृह्यमाणेष्ववर्जनीयतया माषावयवा अपि गृह्यन्त एवेति निषेधः प्रविशत्येवेति सिद्धान्तिनोक्तम् । तस्माद्वचनतो न्यायतश्च साधारणद्रव्यापहारे दोषोऽस्त्येवेति सिद्धम् । मिता. on या. II. 126.

1210. बन्धुनापहृतं द्रव्यं बलान्नैव प्रदापयेत् । कात्या. q. by दायभाग XIII. 7 (p. 222), दायतत्त्व p. 183, वि. र. p. 526, व्य. प्र. 556 which says 'राज्ञे तु भागिभिर्न निवेदनीयं राज्ञे निवेदितमपि तेन सामादिनैव दापनीयमिति प्रत्ययविश्वासादिदृष्टप्रयोजनकमेव'.

1211. गृहोपस्करवाह्याश्च दोह्याभरणकर्मिणः । दृश्यमाना विभज्यन्ते कोशं गूढेऽब्रवीद्भृगुः । कात्या. 842 q. by स्मृतिच. II. p. 273, वि. र. p. 498. The स्मृतिच. quotes a vary similar verse of बृहस्पति (on the same page) viz. गृहोपस्करवाह्यादिदोह्यालङ्कारकर्मिणः । ... गूढे कोशो विधीयते ॥

If there was a dispute whether a partition had already taken place, Yāj. II. 149 mentions some of the indications that lead to the inference or proof of partition viz. 'the determination of the dispute follows from the testimony of kinsmen, cognates (like maternal uncle), other witnesses, a deed (of partition) and by (the fact of) houses and fields being separately held.' Nār. (dāyabhāga 36-41) gives more[1212] elaborate rules on the subject viz. that the status of division can be determined from the fact of their transactions (agriculture &c.) being separate, that the separate performance of religious rites is another indication of separation. 'Receiving and returning a debt, the beasts (kine &c.), food, houses and fields and servants must be separate in the case of those who are divided, as also cooking food, performance of religious rites, income and expenditure. It is only divided persons (and not undivided ones) that can become in respect of each other witnesses, sureties or debtors and creditors. People should regard them to be divided even though there be no deed of partition, in whose case these transactions are entered into openly with their co-sharers'. Yāj. II. 52 also declares that between brothers, husband and wife, father and son there cannot be, as long as they are undivided, the relationship of being sureties or witnesses for each other or of being debtor and creditor. Nār. (dāyabhāga 41) and Kāt. (893) state that when for ten years brothers (and other members of a family) reside (separately) doing religious observances separately and have separate transactions, they should be known as separate so far as the ancestral estate is concerned.[1213] It is on account of these passages that the courts say that presumably every Hindu family is joint in food, worship[1214] and estate and 'that cesser of commensality is an *element* which may properly be considered in determining the question whether there has been

1212. Vide *Debi Parshad v. Thakur Dial* 1 All. 105 F. B. (at p. 109) for the verse of Nār. about religious rites being single when there has been no partition.

1213. वसेयुर्दश वर्षाणि पृथग्धर्माः पृथक्क्रियाः । भ्रातरस्तेऽपि विज्ञेया विभक्ताः पैतृकाद्धनात् ॥ कात्या. q. by स्मृतिच. II. p. 311, स. वि. p. 348, अपरार्क p. 757 (reads वसेयुर्यं दशाब्दानि and पैतृके धने). नारद (दायभाग 41) is वसेयुर्ये दशाब्दानि... । विभक्ता भ्रातरस्ते तु विज्ञेया इति निश्चयः ॥. In *Lalubhai v. Bai Amrit* 2 Bom. 299 (at p. 309) the verse of Kāt. is referred to.

1214. Vide *Sri Raghunadha v. Sri Broso Kishoro* L. R. 3 I. A. 154 at p. 191.

a partition of joint family property, but it is *not conclusive*'.[1215] Bṛ. says that where there are no witnesses nor a document to prove partition, a conclusion may be arrived at by inference.

A few words may be said about the self-acquired property of the father or grand-father. According to the strict theory of the Mit. the son[1216] acquires by birth an interest even in the self-acquired property of the father, but the Mit. makes it clear that the son has no power to prevent his father from disposing of his own self-acquisitions, but has to give his approval to his father's alienations of his self-acquisitions. The Mit. sets out two smṛti texts viz. 'though immovable property and bipeds may have been acquired by the father himself, there can be no gift nor sale of them without (calling together or) consulting all the sons. Those that are born, those that are unborn and those that are in (their mother's) womb expect maintenance (and therefore) there can be no gift nor sale'. But these have been treated by the Mit. and the Dāyabhāga also as more or less recommendatory. If the father alienates his self-acquisitions without his son's consent he may be held guilty of transgressing a smṛti precept but the transaction does hold good and is valid,[1217] since a fact cannot be altered by even a hundred texts (as the Dāyabhāga puts it). It should not be supposed that the Mit. was the first to propound this right as to self-acquisitions. Centuries before, the Viṣṇu Dh. S. 17. 1 expressly declared that as regards self-acquired property the father has absolute discretion to divide it as he pleases.

1215. Vide *Ganesh Dutt v. Jewach* L. R. 31 I. A. 10 at p. 13. साहसं स्थावरं न्यासः प्राग्विभागश्च रिक्थिनाम्। अनुमानेन विज्ञेयं न स्यातां पत्रसाक्षिणौ॥ बृह. q. by दायभाग XIV. 8, p. 231, स्मृतिच. II. p. 310 (reads स्थावरस्वाम्यं), व्य. म. p. 564.

1216. तस्मात्पैतृके पैतामहे च द्रव्ये जन्मनैव स्वत्वम्। ... स्थावरे तु स्वार्जिते पित्रादिप्राप्ते च पुत्रादिपारतन्त्र्यमेव। स्थावरं द्विपदं चैव यद्यपि स्वयमर्जितम्। असम्भूय सुतान्सर्वान् न दानं न च विक्रयः॥ ये जाता येऽप्यजाताश्च ये च गर्भे व्यवस्थिताः। वृत्तिं च तेऽभिकाङ्क्षन्ति न दानं न च विक्रयः॥ इत्यादिस्मरणात्। मिता. on या. II. 114. The first is q. by the दायभाग II. 29-30 (for which see note 1125). The first is ascribed to बृह. by व्यव. नि. p. 411.

1217. पैतृके पैतामहे च स्वाम्यं यद्यपि जन्मनैव तथापि पैतृके पितृपरतन्त्रत्वात् पितुश्चार्जकत्वेन प्राधान्यात् पित्रा विनियुज्यमाने स्वार्जिते द्रव्ये पुत्रेणानुमतिः कर्तव्या। पैतामहे तु द्वयोः स्वाम्यमविशिष्टमिति निषेधाधिकारोऽस्तीति विशेषः। मिता. on या. II. 121.

Kāt. (839) also says that the son has no ownership in the father's self-acquisition.[1218] When Yāj. II. 114 allows the father either to give the best share to the eldest son or to make an equal division among all sons, the Mit. explains that this unequal division holds good only as to the self-acquisitions of the father. Similarly when Nār. (dāyabhāga 12) or Śaṅkha-Likhita say that the father may take two shares for himself, that is with reference to self-acquisitions, acc. to the Mit. Manu IX. 104 stating that sons have no power over property during the life of the parents refers to the self-acquisitions of the parents. In modern times courts have followed the view that a Hindu father (or any Hindu person whatever) may give, sell or bequeath by will his self acquired property (whether movable or immovable) to any body he likes (vide *Rao Balwant Singh v. Rani Kishori* 25 I. A. p. 54 at pp. 67-68 where the two verses cited by the Mit. were held to contain only a moral precept and not a rule of law capable of being enforced).

Mr. Kishori Lal Sarkar in his Tagore Law Lectures on the Mīmāṁsā rules of interpretation states (p. 21) that 'Mitākṣarā bears the impress of Buddhistic influence'. For this proposition he advances hardly any substantial evidence that will bear scrutiny. His reasons are mostly subjective and he refers to no ancient or medieval Buddhistic texts that elaborate the principle of taking property by birth or the rule of propinquity in deciding questions of inheritance, which two are the most fundamental tenets of the Mitākṣarā system. It appears that the evolution of the son's right to partition, of his equality with his father, of the absolute rights of a person to his self-acquisitions was a gradual indigenous growth and had nothing to do with Buddhistic thought. Buddhists had hardly any independent set of juristic ideas or works different from those of the Brahmanical jurists and in medieval times countries like Burma professing Buddhism turned to Brahmanic codes like that of Manu for regulating succession, inheritance and allied

1218. पैतामहं समानं स्यात्पितुः पुत्रस्य चोभयोः । स्वयं चोपार्जिते पिता न पुत्रः स्वाम्यमर्हति ॥ कात्या. q. by स्मृतिच. II. pp. 279-280, व्यव. नि. p. 410.

matters.[1219] Vide pp. 559–560 about the origin of Dāyabhāga doctrines.

In the preceding pages reference has been frequently made to sons, to their rights in ancestral property by birth and to their shares on partition. It is now time to refer to the various kinds of sons, principal (*mukhya*) and *gauṇa* (subsidiary or secondary).

In H. of Dh. vol. II. pp. 560–561 passages from the Ṛgveda, the Tai. S., Śat. Br., Ait. Br., the sūtras and smṛtis emphasizing the importance of a son for the spiritual welfare of a man have been cited. The principal purposes served by the birth of a son are succinctly stated in the Ait. Br. 33. 1. viz. the son enables the father to pay off the debt he owes to his ancestors, to secure immortality (*amṛtatva*) and heavenly worlds. These were the main purposes deemed to be served by a son in most remote times. Manu (IX. 106–107) and Yāj. I. 78 also mention these benefits. The desire was to continue and perpetuate the family (*vaṁśasya avicchedaḥ* as the Mit. has it) and to provide for the performance and preservation of religious *sacra* and offerings. This desire was common in ancient societies almost everywhere. The Śat. Br. XII. 4. 3. 1 (S. B. E. vol. 44 p. 157) states 'the father in later life subsists on the son and the son in early life subsists on the father'. The Nirukta[1220] (III. 4) quotes a *ṛk* verse ' thou

1219. Vide ' Notes on Buddhist Law ' by John Jardine and ' Principles of Buddhist Law ' by Chan-toon (Rangoon, 1894) for the *Dhammathats* (Dharmaśāstras), their origin from Indian Codes and works and contents and *Mah Nhin Bwin v. U. Schwe Gone* L. R. 41 I. A. 121 pp. 131–139 for detailed remarks on the 36 Dhammathats of which the Manu Kyay is the most important and which were derived in their remotest origin from the laws of Manu. In ' Champā ' by Dr. R. C. Majumdar in Inscription No. 65 of Jaya-Indravarman II dated śake 1010 it is said ' He followed 18 titles of law prescribed by Manu (' Manumārga '). Manu VIII. 3 employs the words अष्टादशसु मार्गेषु निबद्धानि. Vide also ' Indian influence on the Literature of Java and Bali ' by Himansu Bhushan Sarkar pp. 93–94 and 104 for the influence of Manu on Javanese and Balinese codes and Dr. Majumdar on ' Suvarṇadvipa ' part II pp. 1–23.

1220. तदेतदृक्श्लोकाभ्यामभ्युक्तम्। अङ्गादङ्गात्संभवसि हृदयादधिजायसे। आत्मा वै पुत्रनामासि स जीव शरदः शतम्॥ निरुक्त III. 4. This verse is found in कौषीतकि आरण्यक 4. 11 and is prescribed as a *mantra* in the Āp. Mantrapāṭha II. 11. 33 for recital in *jātakarma*, in आश्व. गृ. 1. 15.11 and मानवगृह्य I. 18. 6. Vide H. of Dh. vol. II. p. 235 n. 537. It occurs also in बौ. ध. सू. II. 2. 15–16 (as a quotation) and in शङ्खलिखित (q. by वि. र. pp. 554–555). The first half occurs in बृह. उप. VI. 4. 9 in another connection and the whole of it in आदिपर्व 74. 63.

art born from each of the limbs, from the heart (of the father), thou art indeed one's own self called son; mayst though live for a hundred autumns!'. Gradually the idea arose (probably suggested by etymologists) that the son saved the father from the Hell called *put*,[1221] as stated by Manu IX. 138 (= Ādiparva 229. 14 = Viṣṇu Dh. S. 15. 44). The son's close connection with the offering of piṇḍas to the ancestors is not much emphasized in the oldest works. But in the sūtras, in Manu and the other smṛtis this aspect of the benefits derived from the son is far more prominent than the others. In speaking of the putrikāputra Manu (IX. 136) declares 'he should offer piṇḍa' (to his maternal grandfather) and take the latter's wealth. As three descendants (son, grandson and great-grandson) presented piṇḍas to the ancestor, all three had extravagant praises bestowed on them. Manu IX. 137 says: 'a man secures the (higher) worlds through (the birth of) a son, he obtains permanence (in those worlds) through a grandson, through the son of a grandson he wins the world of the Sun'[1222]. The Viṣṇudharmasūtra 85. 67 declares[1223] 'A man should desire to have many sons (with the thought) that some one out of them may go to Gayā or offer the Aśvamedha sacrifice or let loose (in honour of the deceased father) a dark bull'. Br. (q. in Par. M. I. 2 p. 305) states: 'the pitṛs afraid of falling into Hell desire to have sons; (they think) one of them may go to Gayā and that one will save us; he will set at liberty a bull, he may perform sacrifices and execute works of public utility (like tanks, temples and parks), he will take care of us in our old age, he will offer śrāddha day by day'. The Matsyapurāṇa 204 (3–17) contains verses (that are called *pitṛgāthās*, verses sung by pitṛs) which breathe the hankerings of deceased ancestors after what

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1221. The बौ. गृह्यपरिभाषा I. 2. 5. quotes 'पुदिति नरकस्याख्या दुःखं च नरकं विदुः । पुदि त्राणात्ततः पुत्रमिहेच्छन्ति परत्र च ॥'; शङ्खलिखित q. by वि. र. p. 555 state आत्मा पुत्र इति प्रोक्तः पितुर्मातुरनुग्रहात् । पुन्नाम्नस्त्रायते यस्मात्पुत्रस्तेनासि संज्ञितः ॥

1222. पुत्रेण लोकाञ्जयति पौत्रेणानन्त्यमश्नुते । अथ पुत्रस्य पौत्रेण ब्रध्नस्याप्नोति विष्टपम् ॥ मनु IX. 137. This verse occurs in Vas. 17. 5, बौ. ध. सू. II. 9. 7 (reads last pāda as नाकमेवाधिरोहति), विष्णुध. सू. 15. 46.

1223. एष्टव्या बहवः पुत्रा यद्येकोपि गयां व्रजेत् । यजेत वाश्वमेधेन नीलं वा वृषमुत्सृजेत् ॥ विष्णुधर्मसूत्र 85. 67 = मत्स्यपुराण 22. 6 = वायु 150. 10 = ब्रह्मपुराण 220. 32–33 (which reads गौरीं वाप्युद्वहेत्कन्यां नीलं &c. मत्स्य (207. 39–40) calls this verse an ancient गाथा and reads as in ब्रह्मपुराण. Compare अत्रिस्मृति verse 55 for almost the same verse. काङ्क्षन्ति पितरः पुत्रान्नरकापातभीरवः । गयां यास्यति यः कश्चित्सोऽस्मान्संतारयिष्यति । करिष्यति वृषोत्सर्गमिष्टापूर्तं तथैव च । पालयिष्यति वृद्धत्वे श्राद्धं दास्यति चान्वहम् । बृह. q. by परा. मा. I. 2, p. 305.

they expect their descendants to do such as offering water in holy rivers, śrāddhas, going to Gayā, gifts of various kinds, construction of tanks, &c.

It is not, however, to be supposed that purely secular benefits to be derived from sons were not thought of at all. People were alive to them but those benefits were submerged under the flood of extravagant ideas about the spiritual benefits derived from sons. For example, the Bṛ.[1224] Up. I. 5. 16, after mentioning the three worlds of men, *pitṛs* and gods, declares that the world of men can be won only through the son (while in I. 5. 17 there is eulogy of the son and instruction to him that he is Brahma, he is yajña, he is the heavenly world). Nār. IV. 5 says[1225] "fathers wish to have sons on their own account thinking in their hearts 'He will free me from low and high debts'". Kāt. (551) has a similar verse and makes the meaning of Nār. clear[1226]. Vide above (under ṛṇādāna pp. 416–417).

Besides the *aurasa*, eleven or twelve kinds of subsidiary sons are mentioned by most ancient smṛti writers. Āp. Dh. S. does not recognize any son except the *aurasa*. Āp. quotes certain verses which express the view of an ancient sage called Aupajanghani and which are also quoted by the Baud. Dh. S. according to which the aurasa was to be recognized as the only son (vide H. of Dh. Vol. II. p. 602 n. 1417 for the quotation) Āp. II. 5. 13. 10 emphasizes that there can be no real gift or sale of one's child (*dānam krayadharmaścāpatyasya na vidyate*). But Āp. Dh. S. clearly shows that it knew that kṣetraja sons were

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1224. अथ त्रयो वाव लोका मनुष्यलोकः पितृलोको देवलोक इति सोऽयं मनुष्यलोकः पुत्रेणैव जय्यो नान्येन कर्मणा कर्मणा पितृलोको विद्यया देवलोकः । बृह. उप. I. 5. 16.

1225. इच्छन्ति पितरः पुत्रान् स्वार्थहेतोर्यतस्ततः । उत्तमर्णाधमर्णेभ्यो मामयं मोचयिष्यति । नारद (ऋणादान 5) ; कृष्ण says to घटोत्कच in द्रोणपर्व 173. 54 'इच्छन्ति पितरः पुत्रान्स्वार्थहेतोर्घटोत्कच । इह लोकात्परे लोके तारयिष्यन्ति ये हिताः ॥'. 'जायमानो॰ इति श्रुत्युक्तं पितृऋणत्रयं इष्ट्वा देयमधमऋणमित्यर्थः ।' वि. ता. folio 181.

1226. पितॄणां सुतभिर्जातैर्दानेनैवाधमात्तणात् । विमोक्षस्तु यतस्तस्मादिच्छन्ति पितरः सुतान् ॥ कात्या. q. by स्मृतिच. II. p. 168, परा. मा. III. 263.

raised and forbids that practice. In II. 6. 13. 1–5[1227] it states, 'sons begotten by a man, who approaches in the proper season a woman of equal caste that has not belonged to another man (as wife) and that has been married to him according to the śāstras, have the privilege to follow the occupations (peculiar to their castes) and to inherit property ; if a man has sexual intercourse with a woman who had been married before to another or was not married legally to him or belongs to a different caste, they both incur sin and through that (i. e. their sinfulness) the son also becomes sinful '. In II. 10. 27. 2–6 Āp. condemns the practice of *niyoga* ' a husband (or his elders) shall not appoint a wife who occupies the position of a *sagotra* to others (who are not sagotra), for they declare that a bride is given to the family (of the husband and not to the husband alone). This (practice of appointment) is forbidden (now) on account of the weakness of (men's) senses. The hand of even a sagotra is (deemed in law to be) that of a stranger, as well as that of any other person (except the husband). If the marriage vow is violated, both (husband and wife) go to Hell. ' Gaut. 28. 30–31, Baud. Dh. S. II. 2. 14–37, Vas. 17. 12–38, Arthaśāstra III. 7, Śaṅkha-Likhita (q. by V. R. p. 547), Hārīta (q. by V. R. p. 549), Manu IX. 158–160, Yāj. II. 128–132, Nār. (dāyabhāga 45–46), Kāt. (q. by V. Nir. pp. 434–435), Bṛ. (S. B. E. vol. 33 pp. 375–376 verses 33–35, 39–41), Devala (q. by Haradatta on Gaut. 28. 32, Dāyabhāga X. 7–8 p. 147, V. R. p. 550), Viṣṇu Dh. S. 15. 1–30, Mahābhārata (Ādiparva 120. 31–34), Brahmapurāṇa (q. by Aparārka p. 737), Yama (q. by V. R. p. 147 and D. C. pp. 80–81) enumerate the several sons in different sequences and sometimes under different names also. Taking the order in the Manusmṛti as the basis, the following table will, it is hoped, convey some idea about their number, rank and importance.

1227. सवर्णापूर्वशास्त्रविहितायां यथर्तु गच्छतः पुत्रास्तेषां कर्मभिः सम्बन्धः । दायेन ... पूर्ववत्यामसंस्कृतायां वर्णान्तरे च मैथुने दोषः । तत्रापि दोषवान्पुत्र एव । आप. ध. सू. II. 6. 13. 1–4 ; सगोत्रस्थानीयां न परेभ्यः समाचक्षीत । कुलाय हि स्त्री प्रदीयत इत्युपदिशन्ति । तदिन्द्रियदौर्बल्याद्विप्रतिपन्नम् । अविशिष्टं हि परत्वं पाणेः । तद्व्यतिक्रमे खलु पुनरुभयोर्नरकः । आप. ध. सू. II. 10. 27. 2–6.

Kind of son (acc. to Manu)	Gautama	Baudhāyana	Kautilya	Vasistha	Hārita	Saṅkha-Likhita	Yāj.	Nārada	Bṛhaspati	Devala	Visnu	Ādiparva	Yama	Brahma-purāna
1 Aurasa[1228] ...	1	1	1	1	1	1	1	1	1	1	1	1	1	1
2 Putrikāputra ...	10	2	2	3	5	3	2	3	2	2	3	2	3	2
3 Ksetraja ...	2	3	3	2	2	2	3	2	3	3	2	3	2	3
4 Datta ...	3	4	9	8	7	9	7	9	4	9	8	7	9	4
5 Kṛtrima ...	4	5	11	...	...	...	9	11	7	11	12	9	10	6
6 Gūḍhotpanna ...	5	6	4	6	6	6	4	6	12	5	6	6	6	9
7 Apaviddha ...	6	7	5	11	9	7	12	8	5	6	11	...	7	8
8 Kanina ...	7	8	6	5	4	5	5	4	10	4	5	5	5	10
9 Sahoḍha ...	8	9	7	7	10	8	11	5	11	7	7	11	8	11
10 Krita ...	12	10	12	9	8	10	8	10	6	12	9	8	11	7
11 Paunarbhava ...	9	11	8	4	3	4	6	7	9	8	4	4	4	12
12 Svayaṁdatta ...	11	12	10	10	11	12	10	12	...	10	10	10	12	5
13 Saudra ...	...	13	...	12	...	11	...	...	8	...	...	12	...	13

1228. The औरस is called स्वयंजात in आदिपर्व 120. 33. I understand प्रणीत, परिक्रीत and स्वैरिणीपुत्र in the आदिपर्व to be the same as पुत्रिकापुत्र, क्षेत्रज and गूढज respectively. स्वयंजातः प्रणीतश्च परिक्रीतश्च यः सुतः। पौनर्भवश्च कानीनः स्वैरिण्यां यश्च जायते। दत्तः क्रीतः कृत्रिमश्च उपगच्छेत्स्वयं च यः। सहोढो ज्ञातिरेताश्च हीनयोनिधृतश्च यः। पूर्वपूर्वतमाभावं मत्वा लिप्सेत वै सुतम्। उत्तमादेवरात्पुंसः काङ्क्षन्ते पुत्रमापदि। आदिपर्व 120. 33-35. I take ज्ञातिरेताः as an adjective of सहोढ and हीनयोनिधृतः as शौद्र. It has to be noted that the अनुशासनपर्व (49. 3-11) mentions 20 sons in all and employs a peculiar terminology in several cases, viz. औरस (also called अनन्तरज), निरुक्तज (for क्षेत्रज), प्रसृतज (meaning अनियोगोत्पन्न), पतितास्वभार्यायां जात, and speaks of दत्त, क्रीत, अध्यूढ (=सहोढ), 6 अपध्वंसजs (i. e. अनुलोमs), कानीन and 6 अपसदs (चाण्डाल, व्रात्य, वैद्य, मागध, वामक and सूत). The Anuśāsana (49. 11) expressly states that it is not possible to deny altogether the status of sonship to these sons (पुत्रा ह्येते न शक्यन्ते मिथ्या कर्तुं नराधिप). It then says (49. 20-21) that when a boy is abandoned by his parents and he is brought up by another and his natural parents are not known, he belongs to the caste of the man who brings him up and that even for कानीन and अध्यूढ (सहोढ) sons saṁskāras are to be performed as if they were one's sons (49. 25-26).

Viṣṇu Dh. S. (15. 27) mentions 'yatra-kvacanotpādita' (procreated anywhere) as the 12th and last. The com. Vaijayantī explains it in two ways: (1) procreated by a person on a woman, regardless of whether she is his own or another's wife or whether she is of the same caste or not, whether she is married or unmarried, whether her marriage has been consummated or not; (2) the son of a man from a śūdra woman not married to him. Even in the last sense he cannot be called *śaudra* (whom Manu IX. 178 and Yāj. I. 91 define as the son of a śūdra *wife* from a brāhmaṇa). Hārīta as quoted in the V. R. p. 549 mentions a son called 'sahasā dṛṣṭa' (seen by chance), who seems to be probably the same as kṛtrima. The śaudra is omitted by several writers (even ancient ones) like Gautama, Kauṭilya and Hārīta. Manu speaks of only twelve sons (IX. 158) and does not enumerate the putrikāputra among them, though he speaks of the putrikā (IX. 127 and 134 and elsewhere) as equal to the son. It is therefore that Br. (S. B. E. 33 p. 375 verse 33) states that of the thirteen sons mentioned in succession by Manu the legitimate son of the body (*aurasa*) and the *putrikā* (the daughter appointed as a son) continue the family. Vas. 17. 12 emphatically declares (*dvādaśa ityeva putrāḥ purāṇadṛṣṭāḥ*) that only twelve sons have been noticed by the ancient (sages) and it is no doubt true that most writers generally enumerate twelve. A smṛti text quoted by Haradatta on Gautama and by the Dattaka-mīmāṁsā mentions 15 kinds of sons. Vide note below[1229]. The number is arrived at by counting the putrikā

1229. औरसः पुत्रिका बीजिक्षेत्रजौ पुत्रिकासुतः । पौनर्भवश्च कानीनः सहोढो गूढसंभवः । दत्तः क्रीतः स्वयंदत्तः कृत्रिमश्चापविद्धकः । यत्र क्वचोत्पादितश्च पुत्राख्या दश पञ्च च ॥ स्मृति q. by हरदत्त on गौ. 28. 32, दत्त. मी. p. 68. The compound बीजिक्षेत्रजौ is to be taken as बीजिज and क्षेत्रज. The word *bījin* is the epithet of the man who is appointed to beget issue in the practice of *niyoga*, the बीजिज being the son begotten by such a man, who (the son) is deemed by some to be the son of both (of the begetter and of the husband of the wife). Dr. Jolly in Tagore Law Lectures on partition &c. p. 146 is wrong in taking 'bījin' as 'the son procreated with another man's wife'. 'Bījin' is employed by Gaut. IV. 3 and Manu IX. 51-53 in the sense given above. Vide H. of Dh. II. p. 599 n. 1409 for bījin, kṣetra (meaning wife) and *kṣetrika*. तद्वत्परस्त्रियाः पुत्रौ द्वौ सुतौ कुण्डगोलकौ । पत्यौ जीवति कुण्डः स्यान्मृते भर्तरि गोलकः ॥ औरसः क्षेत्रजश्चैव दत्तः कृत्रिमकः सुतः । दद्यान्माता पिता वापि स पुत्रो दत्तको भवेत् ॥ पराशर IV. 23-24. Laghu-Āśvalāyana (21. 14-15) says that though certain sages provide that the Kuṇḍa and Golaka sons should have the saṁskāras performed on them, that was the practice in other ages and that it is prohibited in the Kali age.

(daughter appointed as a son) and the putrikāputra (the son of the appointed daughter) as two, dividing the kṣetraja into two viz. as the son of the begetter (*bījin*) and as the son of the wife (i. e. of the husband of the wife) and the son produced anywhere (as mentioned by Viṣṇu Dh. S.) is 15th and the last. The Parāśarasmṛti (IV. 23-24) mentions, besides Kuṇḍa and Golaka, only five kinds of sons.

It is necessary, before proceeding further, to give brief definitions of the twelve or thirteen kinds of sons from Manu and other writers. The legitimate son (aurasa) is one begotten by a man on his own wedded wife of the same caste. The putrikāputra [1230] is of two kinds; (1) a sonless man may appoint his daughter as his son (she is then called *putrikā* and treated as a son); (2) or she may be given to a person in marriage with the stipulation 'I give you in marriage this brotherless girl decked with ornaments; the son born of her will be my son'. In this case the son born of the daughter so given becomes the son of his maternal grandfather. The *kṣetraja* (the son of the wife) is one who is begotten on a man's wife (or widow) by a *sagotra* (agnatic kinsman) or by one not of the same gotra, according to the rules of *niyoga*, when the man himself is either dead or impotent or suffering from (an incurable) disease. That is the son given (*dattaka* or *dattrima*) whom his father or mother gives as a son affectionately in a time of distress with water and who is of the same caste (as the adopter). He is the son called *kṛtrima* (made) whom a man makes his son, the latter being of the same caste, being clever in distinguishing between right and wrong and being endowed with the qualities a son should possess. He is the son born secretly (*gūḍhotpanna* or *gūḍhaja* as he is called by Baud. and Yāj.), who is born in a man's house, it being not known who is his begetter; and he belongs to him of whose wife he is born. He is the son called *apaviddha* (cast off) whom a man receives as his son after he has been abandoned by his parents or by one of them. The *kānīna* (maiden's son) is one whom a maiden bears secretly in the house of her father and he belongs to him who marries her afterwards.

1230. पुत्रिकासुतो द्वेधा। तत्रायमाह वसिष्ठः (१७. १७)—अभ्रातृकां प्रदास्यामि तुभ्यं कन्यामलङ्कृताम्। अस्यां यो जायते पुत्रः स मे पुत्रो भविष्यति॥ इति। अन्यमाह स एव—तृतीयः पुत्रिकैव—इति। अस्मिन्पक्षे कन्यैव पितुरौर्ध्वदेहिकादि कार्यम्। व्य. मयूख p. 107. In the first sense mentioned above in the text the word पुत्रिकापुत्र is dissolved as पुत्रिका एव पुत्रः (a कर्मधारय) and in the 2nd as पुत्रिकायाः पुत्रः (a तत्पुरुष compound). The मिता. on या. II. 128 gives the same explanation.

The *sahoḍha* (received together with the bride) is the son born of a woman who was pregnant at the time of marriage, whether that fact was known or unknown (to the person marrying her) and he belongs to the person who weds the (pregnant) woman. The *krīta* (son bought) is one who is bought by a person from his father and mother for making the boy his son, whether the boy be equal or unequal (in qualities). The *paunarbhava* (the son of a remarried woman) is one to whom a woman, being abandoned by her husband or being a widow, gives birth after she contracts a second marriage of her own accord. He, who, having lost his parents or being abandoned by them without proper cause, gives himself to a man (as a son) is called *svayaṁdatta* (a son self-given). The son whom a brāhmaṇa begets through lust from a śūdra wife is called pāraśava (or śaudra), since he, though living, is (like a) corpse.

The list of twelve or thirteen kinds of sons looks rather formidable, has puzzled and misled even great scholars into making all sorts of sweeping assertions and putting forward untenable theories about the origin and necessity of so many sons. For example, Dr. Jolly in his ' *Recht und Sitte* ' (English tr. p. 156) observes ' The twelve kinds of sonship, which to some extent are based on the illicit connection of the mother and for the greater part have nothing to do with the blood-relationship of the son with the father, are probably the most striking feature of Indian family law. The cause of this abnormal importance being attached to male issue is to be sought, according to the smṛtis, in the offering of sacrifices to the *manes* which depends upon the male issue; yet, however, originally an economic motive was perhaps a more important factor in it—to get for the family as many powerful workers as possible '. The learned writer appears to hold that the smṛtis regarded all the secondary sons as equally competent to confer spiritual benefit and that at one and the same time a man could have all or most of them as sons. But he is mistaken in both these respects. The very definition of putrikāputra, kṣetraja[1231] and dattaka given by many of the smṛtis show that one who has already an aurasa

1231. अपुत्रोऽनेन विधिना सुतां कुर्वीत पुत्रिकाम् । मनु IX. 127 ; पितोत्सृजे-त्पुत्रिकामनपत्योऽग्निं प्रजापतिं चेष्ट्वाऽस्मदर्थमपत्यमिति संवाद्य । गौ. 28. 16 ; देवराद्वा सपिण्डाद्वा स्त्रिया सम्यङ्नियुक्तया । प्रजेप्सिताधिगन्तव्या सन्तानस्य परिक्षये ॥ मनु IX, 59 ; अपुत्रेणैव कर्तव्यः पुत्रप्रतिनिधिः सदा । पिण्डोदकक्रियाहेतोर्यस्मात्तस्मात्प्रयत्नतः ॥ अत्रि 52 q. by दत्त. मी. p. 3 and दत्त. च. p. 2.

son, grandson or great-grandson could not have a putrikāputra, a kṣetraja or an adopted son. If the definitions of all the 12 or 13 kinds of sons are carefully analysed, it will be quite apparent that the long list is due to the ancient writers' great *penchant* for divisions and sub-divisions based upon very slight differences of circumstances. The several kinds can be classified into three or four groups as done by Devala.[1232] All the five sons called *dattaka*, *krīta*, *kṛtrima*, *svayaṁdatta* and *upaviddha* are sons who are affiliated by a person under various circumstances. There is no tinge of any illicit connection of the mother in any one of these, the one thing common to all of them being that they are the sons of one man and are treated by another as his. Similarly the *paunarbhava* and *śaudra* are the legal sons of the man himself, but there is opprobrium attaching to them, because in the first case the mother contracted a remarriage (which was very much condemned by the smṛtis) and in the other a brāhmaṇa married a śūdra woman (which also was looked down upon, if not absolutely forbidden as done by Yāj. I. 56). The *paunarbhava* son of a *dvija* is still called a dvija by Manu III. 181, but Manu only provides that he is not fit to be invited at a śrāddha. The putrikā (the daughter appointed as a son) is the man's own child and the putrikāputra also is the man's own grandchild and both these are special cases of adoption and no question of mother's illicit connection arises in these. So out of 13 kinds of sons, nine were entirely free from any taint of illicit connection. There remain only the four viz. kṣetraja, gūḍhotpanna, kānīna, sahoḍha. The kṣetraja was in a class by himself and was a survival of an ancient practice prevalent in many countries all the world over, which had been condemned in India by Āp. (as shown above on p. 644) and his predecessors several centuries before the Christian era. It may, however, be pointed out that some medieval writers held the view that several secondary sons like the dattaka, krīta &c. could be had by a man having no aurasa son.[1232a]

1232. एते द्वादश पुत्रास्तु सन्तत्यर्थमुदाहृताः । आत्मजाः परजाश्चैव लब्धा यादृच्छिकास्तथा ॥ देवल q. by दायभाग X. 7 p. 147, वि. र. p. 550, हरदत्त on गौ. 28. 32. The औरस, पुत्रिका, पौनर्भव and शौद्र would be आत्मज, the क्षेत्रज would be परज, the दत्तक, कृत्रिम, क्रीत, स्वयंदत्त and अपविद्ध would be लब्ध (and also परज) and गूढज, कानीन and सहोढ may be called यादृच्छिक.

1232a. Vide the दत्तसिद्धान्तमञ्जरी of बालकृष्ण (D. C. Ms. No. 203 of 1886-92, folio 11b) 'तस्माद्दत्तकप्रकारेणोक्तविधेः काम्यत्वप्रसाधनद्वारा यावत्कामनासिद्धि-पर्यन्तं पुत्रान्तरग्रहणस्य शास्त्रसिद्धत्वोक्तं दत्तादिभिः पुत्रैर्बहुपुत्रत्वं पितुः सम्माणमेवेति सिद्धान्तः ।'

The chief concern of the smṛtis as shown clearly by the Anuśāsanaparva (chap. 49 quoted above on p. 645) and the com. of Nīlakaṇṭha was to provide for the maintenance and the performance of the saṁskāras of those children that may be either abandoned by their parents or may be under the cloud of illegitimacy.

There is great confusion and contradiction among the sūtras and smṛtis about the place of the several kinds of sons and about their rights. For example, Gautama (probably the most ancient among extant sūtrakāras) assigns the 10th place to the putrikāputra, while Baud., Kauṭ., Yāj, Bṛ. and Devala give him the 2nd place and Vasiṣṭha, Śaṅkha-Likhita, Nār., and Viṣṇu put him 3rd. The *dattaka* is placed very low in the list by most works except by Manu, Gaut., Baud., Bṛ. and Brahmapurāṇa (which put him 3rd or 4th). The 12 kinds are put in two groups by some works. Gaut. (28. 30–31) provides that the aurasa, kṣetraja, datta, kṛtrima, gūḍhotpanna and apaviddha are *rikthabhājaḥ* (take the wealth) and also belong to the *gotra* of the man whose sons they are, while the other six take only the gotra but not the wealth. Baud. Dh. S. (II. 2. 36–37) employs the same words *rikthabhājaḥ* and *gotrabhājaḥ* but differs from Gaut. in including putrikāputra among 'rikthabhājaḥ' and omitting him from the group of 'gotrabhājaḥ'.[1233] Another division (each having six kinds) is into *bandhu-dāyāda* or *dāyādabāndhava* (Manu IX. 158–159 and Nār. dāyabhāga 47) and *adāyādabāndhava* (Manu IX. 160, Vas. 17. 38, Nār. dāyabhāga. 47). The first group, acc. to Manu, comprises aurasa (also putrikā), kṣetraja, datta, kṛtrima, gūḍhotpanna and apaviddha. They are so called because they take the wealth of their father and also of his kinsmen (in the absence of nearer heirs), while the members of the 2nd group (which acc. to Manu IX. 160 comprises kānīna,

1233. पुत्रा औरसक्षेत्रजकृत्रिमगूढोत्पन्नापविद्धा रिक्थभाजः। कानीनसहोढपौनर्भवपुत्रिकापुत्रस्वयंदत्तक्रीता गोत्रभाजः। गौ. 28. 30–31 ; एते गोत्रभाजो गोत्रमेव केवलं भजन्ते न रिक्थम्। पूर्वे तु रिक्थभाजो गोत्रभाजश्चौरसेन सहाभिधानात्। सर्वे चैते सजातीयाः। हरदत्त. What is meant by रिक्थभाजः is not quite certain. Does it mean 'they take the wealth of their father and of his kinsmen' or does it mean 'they take the wealth of their father alone and of no one else'. कुल्लूक appears to hold that बन्धुदायाद has the first sense. तेषां षड् बन्धुदायादाः पूर्वेऽन्ये पितुरेव षड्। कुल्लूक q. by दायभाग X. 7 p. 147. Both the मिता. on या. II. 132 and the दायभाग explain बन्धुदायाद in the first of the two senses set out above. 'औरसादयः षड् न केवलं पितृदायहराः किन्तु बन्धूनामपि सपिण्डादीनां दायहराः। अन्ये परभूताः पितुरेव परं दायहरा न सपिण्डादीनाम्। दायभाग X. 8 p. 147. स्वयंजातः पितृबन्धूनां च दायादः। परं जातः संस्कर्तुरेव न बन्धूनाम्। अर्थशास्त्र III. 7.

sahodha, krīta, paunarbhava, svayaṁdatta and śaudra) are only bāndhavas (i. e. belong to the gotra of their father), but cannot succeed to the wealth of their father's kinsmen. Here also there is no agreement among the smṛtis. Vas. (17. 5-25); Śaṅkha-Likhita (q. in V. R. p. 247), Nār. dāyabhāga 47 and Hārīta include in the first group aurasa, kṣetraja, putrikāputra, paunarbhava, kānīna and gūḍhaja and the rest in the 2nd group. Kauṭ. asserts that only the aurasa son succeeds as heir to the kinsmen of his father while the others (that are not procreated by him) succeed only to the father who brings them up, but not to his kinsmen. Yāj. II. 132 states that each of the twelve kinds mentioned by him takes the wealth of the father and offers *piṇḍa* to him in default of the preceding one and further requires that this is so only if it is certain that the sons are of the same caste as that of the father. Gaut. 28. 32 states that[1234] the kānīna and the other sons called *gotrabhājaḥ* (in 28. 31) take only one fourth of the estate of the father if no aurasa nor any of the other sons called *rikthabhājaḥ* exists (and the rest of the estate is taken by the sapiṇḍas), while Kauṭ., Devala and Kāt. (857) state that the dattaka, kṣetraja and other kinds of sons are entitled to one third share only if an aurasa is born provided they are of the same *varṇa* and that if they are of a different caste, they are only entitled to food and raiment. If a man, having no son, made his daughter a putrikā or thinking himself to be impotent had a kṣetraja son or adopted a son and then an aurasa son was born, difficult questions of the distribution of his property arose on which there was no unanimity. Manu IX. 163 says that only the aurasa son is entitled to all the paternal wealth and all the other kinds should be given maintenance in order to avoid the fault of being cruel. But as regards the case where a putrikā is first made and then an aurasa is born Manu (IX. 134) prescribes that these two should divide the paternal estate equally,[1235] while

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1234. चतुर्थांशिन औरसाद्यभावे । गौ. 28. 32 ; तेषां सवर्णा ये पुत्रास्ते तृतीयांशभागिनः । हीनास्तमुपजीवेयुर्ग्रासाच्छादनसंभृताः ॥ देवल q. by दायभाग X. 7. p. 147 ; उत्पन्ने त्वौरसे पुत्रे चतुर्थांशहराः सुताः । सवर्णा असवर्णास्तु ग्रासाच्छादनभाजनाः ॥ कात्या. q. by मिता. on या. II. 132. दायभाग X. 13 p. 148 and वि. चि. p. 150 read तृतीयांशहराः in कात्या. ; औरसे तूत्पन्ने सवर्णास्तृतीयांशहराः । असवर्णा ग्रासाच्छादनभागिनः । अर्थशास्त्र III. 7. The मदनरत्न (folio 93b) says कल्पतरु read 'तृतीयांशहराः'.

1235. बृहस्पति appears to combine Manu IX. 163 and 134 'एक एवौरसः पित्र्ये धने स्वामी प्रकीर्तितः । तत्तुल्या पुत्रिका प्रोक्ता भर्तव्यास्त्वपरे स्मृताः ॥ q. by वि. र. p. 541, व्यव. नि. p. 437, मदनरत्न (folio 93b).

Manu IX. 164 asks the aurasa to give 1/5 or 1/6 of the paternal wealth to the kṣetraja. This confusion and contradiction about the places and the shares of the several sons leads one to infer that the institution of several kinds of sons was not very common or generally recognized, was rather confined to some localities or communities and was dying out even in the times of the ancient smṛtis, if it ever existed in full force at all at any time.

As regards gūḍhaja, kānīna and sahoḍha there is this to be said. They were the result of illicit connection; but some one had to maintain them, to bring them up and be their guardian. The smṛtis when they assign these as the sons of the husbands of the women of whom they are born are really providing for these matters of maintenance and guardianship. Bṛ. says that dattaka, apaviddha, krīta, kṛta, and śaudra, if of pure caste and pure actions, are middling, while the kṣetraja, paunarbhava, kānīna, sahoḍha and gūḍhaja are condemned by the good (S. B. E. 33 p. 376 verses 40–41).[1236] The kānīna was to be under the guardianship of the father of the girl (Yāj. II. 129) till she remained unmarried, but when she married the damsel's son came under the dominion of the person who married her (Manu IX. 172). The very fact that the kānīna was assigned to the husband who married the girl shows that this was done because it was deemed that by marrying such a girl the husband condoned her past lapses. Similarly in the case of *sahoḍha*, it was deemed that either the child must have been procreated by the husband himself before marriage or that he condoned the conduct of the wife. It appears to have been thought that when the husband (the party most concerned) did not openly object it was not open or allowable for any one else even by proof that the child was kānīna or sahoḍha to call

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1236. दत्तोपविद्धः क्रीतश्च कृतः शौद्रस्तथैव च । जातिशुद्धाः कर्मशुद्धा मध्यमास्ते सुता मताः ॥ क्षेत्रजो गर्हितः सद्भिस्तथा पौनर्भवः सुतः । कानीनश्च सहोढश्च गूढोत्पन्नस्तथैव च ॥ बृह. q. by वि. र. p. 552; हारीत (q. by वि. र. 552) designates क्रीत, स्वयंदत्त and शौद्र as काण्डपृष्ठ. शूद्रापुत्राः स्वयंदत्ता ये चैते क्रीतकास्तथा । सर्वे ते शौद्रिकाः पुत्राः काण्डपृष्ठा न संशयः ॥ स्वकुलं पृष्ठतः कृत्वा यो वै परकुलं व्रजेत् । तेन दुश्चरितेनासौ काण्डपृष्ठो न संशयः ॥. The 2nd verse is quoted by अपरार्क p. 455. नारद IV. 60 calls a ब्राह्मण who persists in the profession of arms after a season of distress is over काण्डपृष्ठ. The अनुशासनपर्व 23. 22 has that word. कुलं काण्डमिति ख्यातं यस्मात् पूर्वाणि ते जहुः । तत्र ज्येष्ठतरो यः स्यात्तं वै काण्डं विनिर्दिशेत् । यम q. by स्मृ. च. p. 486 which also quotes the verse स्वकुलं० from यम and हारीत both separately. काण्डपृष्ठ literally means 'one who carries on his back arrows' (i. e. probably a brāhmaṇa whose profession is that of a soldier).

for the abandonment of the child. Similar remarks apply to the gūḍhaja. As shown in H. of Dh. vol. II. pp. 571–573 if the wife was guilty of adultery the husband had certain powers of correction over the wife, but if he chose to be complaisant, then the smṛtis did not compel him to disown or abandon the child. These very smṛtis (like Gautama, Vas., Nār.) that are very harsh on women for adultery allow the gūḍhaja, kānīna and sahoḍha to be secondary sons. So the only way in which these two attitudes can be reconciled is by holding that when the husband condones moral lapses on the part of the woman whom he had accepted as his wife the smṛtis provide for the maintenance, guardianship and succession of such offspring of illicit connection. Even among medieval commentators there was divergence about paunarbhava, kānīna, sahoḍha and gūḍhaja; Medhātithi on Manu IX. 181 holds that they are entitled to nothing but food and raiment in any case, while the Mit. (on Yāj. II. 132) holds that even the kānīna and the rest take the father's wealth in default of aurasa and the other kinds of sons. The Mit. (on Yāj. I. 90) however holds that kānīna, sahoḍha and gūḍhaja being the outcome of adultery cannot be savarṇa with the husband of their mother, are really different from savarṇa sons and even anuloma and pratiloma sons.

A good deal can be said about the spiritual benefit supposed to be derived from secondary sons.

The high eulogy bestowed on the son in the Vedic and smṛti literature has reference only to the *aurasa* son. Manu IX. 180 asserts that the eleven kinds of sons viz. kṣetraja and the rest (except aurasa and putrikā) are merely substitutes for the real son, admitted to prevent the cessation of religious rites and in IX. 181 Manu states the final conclusion that such sons as the *kṣetraja* that are procreated from the seed of others really belong to him from whose seed they spring and not to the other man (who takes them up). Bṛ.[1237] (S. B. E. 33 p. 375 verses 35–36) declares: 'thirteen sons were enumerated in

1237. पुत्रास्त्रयोदश प्रोक्ता मनुना येऽनुपूर्वशः । सन्तानकारणं तेषामौरसः पुत्रिका तथा ॥ आज्यं विना यथा तैलं सद्भिः प्रतिनिधिः स्मृतम् । तथैकादश पुत्रास्तु पुत्रिकौरसयोर्विना ॥ बृहस्पति q. by अपरार्क p. 735, व्यव. नि. p. 439. The 2nd is attributed to वृद्धबृहस्पति by कुल्लूक on मनु IX. 181. The कृत्यरत्नाकर (p. 73) quotes मैत्रायणीयपरिशिष्ट as follows 'आज्याभावे तैलं प्रतिनिधिस्तदलाभे दधिपयसी तदलाभे तण्डुलपिष्टानि [illegible] संयुज्याज्यार्थे कुर्वन्ति.' The सत्याषाढश्रौतसूत्र III. 1 provides: यथा पूपाज्ये सर्पिषोऽभावे तैलम्.

order by Manu, out of whom only the aurasa and putrikā are the cause of propagating the line. Just as oil is declared by the good to be a substitute (in sacrifices) in the absence of clarified butter, so the eleven kinds of sons in the absence of *aurasa* and *putrikā*[1238] (are admitted merely as substitutes and not the real thing).' Although Yāj. II. 132 declares that each succeeding one out of the twelve kinds of sons takes the estate in the absence of each preceding one and offers *piṇḍa* to the deceased owner, yet the efficacy of the piṇḍas offered by the several sons was deemed to differ very much. Manu leaves no room for doubt on this point when he says (IX. 161) 'a man desiring to cross beyond the gloom (of bad worlds, hells) through (or with the help of) bad sons (such as the kṣetraja) secures a result similar to what a person crossing (a sheet of) water in a leaking boat secures'. The idea is that secondary sons cannot confer the same spiritual benefit as the *aurasa* son can. Medhātithi on Manu IX. 166 and the D. M. explain this very clearly. An aurasa son confers the highest spiritual benefit. The substitute sons (as indicated by the very use of the word *pratinidhi*) confer a much less benefit. Even a man's widow can perform his śrāddha if he be sonless, but as she could not offer the *pārvaṇa śrāddha* her act was not deemed to be as efficacious as a śrāddha performed by a son.[1239] Jaimini devotes several sūtras to the subject of *pratinidhi* (a substitute) in VI. 3. 13–41. The main conclusion established is that generally speaking there can be no substitute as regards the *devatā* (the deity to which a particular offering is directed by the Veda to be offered in a particular sacrifice), the fire (āhavanīya and other consecrated fires), the *mantra* (which is to accompany a particular offering) and certain rites specifically prescribed to be done in a sacrifice (such as 'samidho yajati' in Darśapūrṇamāsa) and the *svāmin* (the sacrificer). On Jaimini VI.

1238. कानीनसहोढपौनर्भवगूढोत्पन्ना न रिक्थभाजः दत्तकादयस्तु रिक्थभाजोऽसत्यौरसे कानीनादयश्च सत्यौरसे न पितृधनहराः ग्रासाच्छादनभाजः केवलं सत्यसति चौरसे । मेधा. on मनु. IX. 181; औरसाद्यभावे तु कानीनादीनामपि सकलपित्र्यधनग्रहणमस्त्येव । पूर्वाभावे परः परः—इति वचनात् । मिता. on या. II. 132.

1239. यद्यपि पुत्राभावे तु पत्नी स्यादित्यादिना पत्न्यादीनामपि क्रियाधिकारः श्रूयते तथापि नापुत्रस्य लोकोऽस्तीत्यादिश्रवणात् पुत्रकृतक्रियाजन्या लोका न पत्न्यादिकृतक्रियया जन्यन्त इत्यवश्यं वाच्यम् । ... उक्तं च मेधातिथिना । यदौरसस्य प्रथमकल्पिकत्ववचनं तन्न व्यवहारोपयोगि किं तु उपकारातिशयाय । यथौरसो भूयांसं शक्नोत्युपकारं कर्तुं न तथेतर इति । उपकारापचयाभिप्रायश्च प्रतिनिधिव्यवहार इति । दत्त. मी. pp. 38–39. The passage quoted from मेधा. occurs in his भाष्य on मनु IX. 166 (with slight variations)

3.35 Śabara makes[1240] it clear that in employing a *pratinidhi* the vedic rite becomes deficient and does not yield the full reward of the religious act. The Satyāṣāḍha Śr. S. III. 1. asserts[1241] that there can be no substitute for the sacrificer, the wife, the son, the place, time &c. (prescribed by the Vedic texts for any rite). Therefore it is clear that there was difference of view among very ancient writers about the spiritual benefit to be derived from substitute sons. The natural human tendency to simplify matters and water down strict injunctions prevailed and it began to be thought that even subsidiary sons conferred some spiritual benefit (though not as much as the aurasa son). For about two thousand years the kṣetraja and other sons have been prohibited by the smṛtis. For example, Bṛ states that Manu first describes the procedure of *niyoga* and then forbids it, that it is impossible to practise *niyoga* in the *dvāpara* and *kali* ages owing to the deterioration in man's knowledge and *tapas* (vide H. of Dh. vol. II. p. 603 n. 1418 for the quotation). The passage from Śaunaka forbidding sons other than *aurasa* and *dattaka* in the Kali age quoted by Aparārka and others has been cited above (n. 1131).

A few remarks will be made on each of the several sons.

Aurasa. Baud. Dh. S. II. 2. 14, Manu IX. 166, Vas. 17. 13, Viṣṇu Dh. S. 15. 2, Kauṭ. III. 7 and others define the aurasa as the son procreated by a man himself from his wife married acc. to sacramental forms prescribed by the śāstra. From Āp. (quoted above in n. 1227) and Baud. it follows that the aurasa is only the son procreated on a wife of the same varṇa as that of the husband; but this was the purists' view. Others including

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1240. अभावे हि श्रुतस्यानुकल्पः प्रतिनिधिः । श्रुते हि सकला व्यक्तयः । प्रतिनिधौ विकलाः । शबर on जै. VI. 3. 35.

1241. न स्वामित्वस्य भार्यायाः पुत्रस्य देशस्य कालस्याग्नेर्देवतायाः कर्मणः शब्दस्य च प्रतिनिधिर्विद्यते । सत्याषाढश्रौत III. 1. The D. M. (pp. 33–34) explains this sūtra about there being no प्रतिनिधि in place of a son by saying that it is restricted to certain śrauta matters only such as the 'Pitāputrīya sāman', or the uttering of a benediction in the words 'tantave jyotiṣmatīm &c.' and that if the sūtra were taken as forbidding a substitute for a son everywhere, it would be opposed to Manu (IX. 180 पुत्रप्रतिनिधीनाहुः) and Atri. यदपि 'न स्वामित्वस्य ... प्रतिनिधिः' इति सत्याषाढवचनेन पुत्रप्रतिनिधिनिराकरणं तत् 'तन्तवे ज्योतिष्मतीं तामाशिषमाशास्ते' इत्यादौ अपुत्रस्य पुत्रप्रतिनिधिं कृत्वा आशीराशंसननिवृत्त्यर्थम् । अत एव श्रुतिः यस्य पुत्रो जातः स्यात् तन्तवे ज्योतिष्मतीमिति ब्रूयात् । ... न पुनः सर्वथैव पुत्रप्रतिनिधिनिराकरणार्थम् । पुत्रप्रतिनिधिः कर्तव्यः पुत्रप्रतिनिधीनाहुरित्यादिस्मृतिविरोधात् । दत्त. मी. pp. 33–34. Vide तै. सं. I. 5. 8.

such medieval works as the Mit. (on Yāj. II. 133), the Pārijāta and Aparārka hold that even the son procreated on a wife married in the anuloma order[1242] (e. g. the son of a brāhmaṇa from a kṣatriya wife or of a kṣatriya from a vaiśya caste wife) was also *aurasa*. The exception was the son of a brāhmaṇa from a śūdra wife, who was called *śaudra* or *pāraśava* and distinguished from the technical aurasa. From the definition of aurasa given by all smṛti writers (and the dicta of such commentaries as the Mit.) it follows that in order to be an aurasa the procreation and the birth of the son must both be after the marriage. But the Privy Council held long ago in *Pedda Amani* v *Zemindar* of *Marungpuri* (1 I. A. 282, 293) that procreation after marriage is not distinctly necessary for legitimacy as a son even according to the ancient texts, that to hold so would be an inconvenient doctrine and that the Hindu Law is the same in that respect as the English Law.[1243]

From the times of the Ṛgveda people prayed for the birth of an *aurasa* son and did not like to adopt the son of another. A Ṛgvedic poet exclaims (VII. 4. 7-8) 'As the wealth (son)

1242. स्वयंजातः कृतक्रियायामौरसः । अर्थशास्त्र III. 7 ; सवर्णायां संस्कृतायां स्वयमुत्पादितमौरसं पुत्रं विद्यात् । गौ. ध. सू. II. 2. 14 ; 'सवर्णा द्विजस्य द्विजा, शूद्रस्य शूद्रा, न तु ब्राह्मणस्य ब्राह्मणी क्षत्रियस्य क्षत्रिया, अन्यथा ब्राह्मणपरिणीतक्षत्रियापुत्रादेरौरसपुत्रान्तर्भावो न स्यादिति पारिजातः । वि. र. p. 554 ; 'तथानुलोमजानां मूर्धावसिक्तादीनामौरसेष्वन्तर्भावात्तेषामप्यभावे क्षेत्रजादीनां दायहरत्वं बोद्धव्यम । शूद्रापुत्रस्त्वौरसोऽपि कृत्स्नं भागमन्याभावेऽपि न लभते । यथाह मनुः (९. १५४) । मिता. on या. II. 133 ; अन्येष्वनुलोमजेष्वौरसेषु सत्सु न प्रतिनिधिरस्ति । अपरार्क p. 740. Vide मद. पा p. 651 for the same views. The मदनरत्न (folio 93a) however remarks, 'सांप्रतं मूर्धावसिक्तादीनां प्रचाराभावेन नेह प्रपञ्चितः'. Vide *n*. 1130 above. The position of the Mit. is somewhat remarkable. The Mit. admits that niyoga is not allowed in the present Kali age (vide above p. 628) and it quotes a smṛti text to that effect, but it allows the sons of anuloma marriages to be aurasa and to succeed before every other kinds of sons. Therefore it follows that the Mit. either did not know the passages of Saunaka and of the Nāradyiapurāṇa (pūrvārdha 24. 13) which forbade marriage with *asavarṇa* girls for the twice-born classes in the Kali age or did not hold them to be authoritative. द्विजानामसवर्णासु कन्यासूपयमस्तथा । ... एतान्धर्मान् कलियुगे वर्ज्यानाहुर्मनीषिणः ॥ बृहन्नारदीयपुराण (पूर्वार्ध 24. 13 and 16).

1243. As this is a decision of the highest tribunal for British India it must be taken to be the law. The Privy Council was probably influenced by the description of such secondary sons as the sahoḍha. The decision is in accordance with English Law and section 112 of the Indian Evidence Act. Vide Dr. Bannerjee's 'Marriage and stridhana' p. 177 for criticism of the P. C. decision.

of another (who is unconnected) is to be avoided, so may we be masters of wealth of our own (i. e. son of our body); O! Agni, the child of another cannot be one's offspring ; it may be so in the case of the fool ; do not spoil our path. A stranger, born of another's loins, though very pleasing, should not be taken, should not be even thought of in the mind (as one's son). Then he goes back to the same house (from which he came) ; may a vigorous, victorious, newly born son come to us ! "[1244]

In modern times the courts generally recognize only two kinds of sons, viz. *aurasa* and *dattaka*, the other kinds of sons being held to be long since obsolete. Vide *Nagindas v. Bachoo* 43 I. A. 56, 67. But two more kinds of sons have been recognized in modern times in certain provinces only, viz. the kṛtrima in Mithilā (modern Tirhoot) and the putrikāputra among the Nambudri brāhmaṇas of Malabar, both of which will be dealt with below.

Putrikāputra. The two meanings of this word given by the Mit. and others relying on Vas. have been stated above (p. 647). Kauṭ. III. 7, Yāj. II. 128, Manu IX. 134 declare the putrikā or putrikāputra to be equal to the aurasa son. The conception underlying the putrikā has a hoary antiquity. There are traces of the putrikā in the Ṛgveda itself. Vas.[1245] XVII. 16 refers to

1244. परिषद्यं ह्यरणस्य रेक्णो नित्यस्य रायः पतयः स्याम । न शेषो अग्ने अन्यजातमस्त्यचेतानस्य मा पथो वि दुक्षः ॥ न हि ग्रभायारणः सुशेवोऽन्योदर्यो मनसा मन्तवा उ । अधा चिदोकः पुनरित्स एत्या नो वाज्यभीषाळेतु नव्यः ॥ ऋ. VII. 4. 7-8. The verses are rather obscure, particularly the first one. The meaning given above is that of such an ancient writer as Yāska in Nir. III. 1-3. He says that these two verses support the view that the son belongs to the begetter (and not to the adopter) : 'तद्यथा जनयितुः प्रजा एवमर्थीये ऋचावुदाहरिष्यामः । परिषद्यं० ।.' Compare आप. ध. सू. II. 6. 13. 5 'उत्पादयितुः पुत्र इति हि ब्राह्मणम् ।. The निर्णयसिन्धु says that the verse (न हि ग्रभाय) does not really mean to prohibit the adoption of sons but is intended to extol the aurasa, as otherwise it would be opposed to the indications contained in the story of the acceptance of Śunaḥśepa as a son and to the words of the latter 'may I become your son'. योपि न हि ग्रभाया ... मन्तवा उ—इति श्रुतौ दत्तकनिषेधः सोप्यौरसातिशयार्थः, अन्यथा शुनःशेपादिप्रतिग्रहश्रौतलिङ्गविरोधापत्तेः । उपेयां तव पुत्रतामित्युक्तेः । नि. सि. III पूर्वार्ध p. 250. उपेयां तव पुत्रताम् are the words of शुनःशेप in ऐ. ब्रा. 33. 5.

1245. विज्ञायते अभ्रातृका पुंसः पितॄनभ्येति प्रतीचीनं गच्छति पुत्रत्वम् । वसिष्ठ 17. 16; अभ्रातेव पुंस एति प्रतीची गर्तारुगिव सनये धनानाम् । जायेव पत्य उशती सुवासा उषा हस्रेव नि रिणीते अप्सः ॥ ऋ. I. 124. 7; the निरुक्त (III. 5) comments 'अभ्रातृकेव पुंसः पितॄनेत्यभिमुखी सन्तानकर्मणे पिण्डदानाय न पतिम् ।... उषा हसना इव दन्तान् विवृणुते रूपाणि ।'. अमूर्या यन्ति योषितो हिरा लोहितवाससः । अभ्रातर इव जामयस्तिष्ठन्तु हतवर्चसः ॥ अथर्ववेद I. 17. 1. The निरुक्त III. 4 reads अभ्रातर इव योषास्तिष्ठन्ति हतवर्त्मनः and explains अभ्रातृका इव योषास्तिष्ठन्ति सन्तानकर्मणे पिण्डदानाय हतवर्त्मानः । इति अभ्रातृकाया अनिर्वाह औपमिकः ।.

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Ṛg. I. 124. 7 in connection with putrikā. That verse contains four similes in describing the advent of *Uṣas* (Dawn) 'As a woman that has no brother comes back to (her) male relations,... like a smiling damsel the Dawn unmasks objects (or her beauty)'. The Nirukta (III. 5) explains the first quarter as meaning that a brotherless maiden (after marriage) comes back to her paternal line for continuing that line and for offering *piṇḍas* (to her paternal ancestors) and does not go to her husband's line. The Ṛg. in several places refers to the difficulty of getting brotherless maidens married and to the fact of their remaining in their father's house as old maidens; vide Ṛg. II. 17. 7 '*amājūr-iva pitroḥ sacā satī*' and IV. 5. 5. The Atharvaveda I. 17. 1 states 'like brotherless sisters let these stand still with their splendours gone'. Yāska explains that, as brotherless maidens, when married, bar the way to the continuance of the family of their husbands and to offering of piṇḍas (through their son), so are these red arteries &c. Yāska (Nirukta III. 4) relies for the appointment of a brotherless daughter as a son upon another very obscure verse of the Ṛg. (III. 31. 1)[1246] 'the husband declares (or promises) that the father may regard (the daughter's son) as his son's son'. The Nirukta[1247] (III. 5) quotes a Vedic text 'one should not marry a brotherless (girl), for she becomes (her father's) son' and holds that it expressly prohibits marriage with a brotherless maiden and also declares that such a girl becomes a son to her father. The brotherless maiden is appointed as a son by express agreement, but according to Gautama 28. 17 the opinion of one school (which he does not approve) was that a brotherless girl became a putrikā by the mere unilateral intention of the father and therefore one should not marry a brotherless maiden for fear that the father (without expressly stipulating so) might intend her to be putrikā. Manu III. 11 contains a similar caution. This recommendation not to marry a brotherless maiden continued down to the days of Yāj. (I. 53 'aroginīm bhrātṛmatīm'), though in modern times many would prefer to marry such a girl, provided the father was well-off. Manu IX. 140 states that the

1246. शासद्वह्निर्दुहितुर्नप्त्यं गाद्विद्वाँ ऋतस्य दीधितिं सपर्यन्। पिता यत्र दुहितुः सेकमृञ्जन्त्सं शग्म्येन मनसा दधन्वे॥ ऋ. III. 31. 1. The निरुक्त III. 4 explains प्रशास्ति वोढा सन्तानकर्मणे दुहितुः पुत्रभावम्। ... मन्यतामगमद् दौहित्रं पौत्रमिति।.

1247. नाभ्रातृकीमुपयच्छेत्तोकं ह्यस्य तद्भवति—इति अभ्रातृकाया उपयमनप्रतिषेधः प्रत्यक्षः पितुश्च पुत्रभावः। निरुक्त III. 5. विश्वरूप on या. I. 53 states that नाभ्रातृकीम् &c. is a text of the Bhāllavins. मेधा° on मनु IX. 132 quotes नाभ्रातृकी ... तद्भवति. अभिसन्धिमात्रात्पुत्रिकेत्येकेषाम्। तत्संशयान्नोपयच्छेदभ्रातृकाम्। गौ. 28. 17-18.

three piṇḍas that the putrikāputra offered were respectively to his mother, to the mother's father and to the mother's paternal grand-father.

The putrikāputra is no longer recognised anywhere in India except among the Nambudri brāhmaṇas of Malabar. Vide *Thakoor Jeebnath v. Court of Wards* 2 I. A. 163, 167, *Babui Rita v. Babu Puran* 1 Pat. L. J. 581, *Kumaran v. Narayanan* 9 Mad. 260, *Chemnauth v. Palakuzhu* 25 Mad. 662, 31 Mad. 310. It appears that even a Madras authority like the Smṛticandrikā[1248] was not aware of the prevalence of the putrikāputra in Malabar.

Kṣetraja. This kind of son arose from the practice of *niyoga.* The origin of this practice and the limitations under which it was allowed have been dealt with at length in H. of Dh. vol. II. pp. 599-607. One matter not mentioned therein is this that the Brahmapurāṇa states that kṣetraja sons were very common among kṣatriyas since they had no progeny either because they were cursed (by sages for their misdeeds) or because they were constantly engaged in war.[1249] The Baud. Dh. S. II. 2. 21-23 and Kauṭ. III. 7 declare the kṣetraja to be the son of two fathers, to have two *gotras* and to offer piṇḍas to both fathers (provided there is no aurasa son born subsequently) and to take their wealth and that in offering each piṇḍa they have to associate it with two names.[1250] It is to be noted that the Mit. on Yāj. II. 127 introduces the kṣetraja as dvyāmuṣyāyaṇa, although that word, as will be seen later on, has another significance also. The Madanapārijāta (p. 651) also regards kṣetraja and dvyāmuṣyāyaṇa as synonyms. The Vivādatāṇḍava (folio 122) states that the dvyāmuṣyāyaṇa and sons of intercaste marriages being forbidden in Kali it does not enter into any discussion about the rules of allotting shares to them.

1248. अत्र चास्माभिरसवर्णपुत्राणां दत्तकेतरेषां गौणपुत्राणां पुत्रिकायास्तत्सुतस्य च भागविधयो न निबध्यन्ते संप्रत्यननुष्ठीयमानत्वाद् वृथा च ग्रन्थविस्तारापत्तेः । स्मृतिच. II. p. 289. Vide n. 1130.

1249. राज्ञां तु शापदग्धानां नित्यं क्षयवतां तथा । अथ संग्रामशीलानां न कदाचिद्भवन्ति ते । औरसो यदि वा पुत्रस्त्वथवा पुत्रिकासुतः । विद्यते न हि तेषां तु विज्ञेयाः क्षेत्रजादयः । ब्रह्मपुराण quoted by अपरार्क p. 737.

1250. स एव द्विपिता द्विगोत्रश्च द्वयोरपि स्वधारिक्थभाग्भवति । अथाप्युदाहरन्ति । द्विपितुः पिण्डदानं स्यात् पिण्डे पिण्डे च नामनी । त्रयश्च पिण्डाः षण्णां स्युरेवं कुर्वन्न मुह्यति ॥ इति । बौ. ध. सू. II. 2. 21-23 ; 'जनयितुरसत्यन्यस्मिन् पुत्रे स एव द्विपितृको द्विगोत्रो वा द्वयोरपि स्वधारिक्थभाग्भवति' अर्थशास्त्र III. 7 ; 'द्व्यामुष्यायणस्य विजातीयानां च विभागे विशेषः कलावसत्त्वान्नोच्यते' वि. ता. folio 122.

Dattaka. This will be dealt with separately later on.

Kṛtrima—(or *kṛta*, as in Nār. dāyabhāga 46). According to Manu IX. 169, Yāj. II. 131, Baud. Dh. S. II. 2. 25 and the Mit. and other works a kṛtrima is a person (of the same caste as the adopter) who has no parents and who is adopted with *his own consent* by the tempting offer of wealth. He is distinguished from the *dattaka* by the fact that he is not given by the father or mother and by the fact that his own consent is necessary (so that he must be major according to the ancient Hindu Law). Such a son is recognized in modern times only in Mithilā (Tirhoot) and the adjoining districts and among the Nambudri brāhmaṇas of Malabar (as held in *Vasudevan v. Secretary of State* 11 Mad. 157). Considerable case law exists about the kṛtrima adoption, for which Mulla's Hindu Law pp. 563–564 (9th ed.) and Mayne's Hindu law (10th ed.) pp. 293–294 may be consulted.

Gūḍhaja. There is probably a reference to such a son in the Ṛg. II. 29. 1[1251] 'O! Ādityas, that uphold the moral law, that are always active, keep away from me sin as a woman giving birth to a child in secret (removes it)'.

Kānīna. This word is derived from the word 'kanyā' (a maiden). Pāṇini IV. 1. 116 (*kanyāyāḥ kanīna ca*) derives the word in the sense of "child of a maiden" and the Kāśikā gives Karṇa and Vyāsa as instances of kānīna sons. The word kānīna occurs in the Atharvaveda V. 5. 8 and *kumārīputra* occurs in the Vājasaneyasaṁhitā 30. 6. Nār. (dāyabhāga 17)[1252] says that the kānīna, sahoḍha and gūḍhaja are the sons of the man who marries the mother of these and they take the wealth of the husband of their mother. The Pārijāta (q. by V. R. p. 565) states that the kānīna and sahoḍha become the sons of their mother's father if the latter is sonless, but if he has a son then they become the sons of the husband of their mother and if both have no sons then they become the sons of both.

Krīta—(the son bought). Vas. (17. 30–32) states that Hariścandra purchased Śunaḥśepa from Ajīgarta and that

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1251. धृतव्रता आदित्या इषिरा आरे मत्कर्त रहसूरिवागः । ऋ. II. 29. 1.

1252. कानीनश्च सहोढश्च गूढायां यश्च जायते । तेषां वोढा पिता ज्ञेयस्ते च भागहराः स्मृताः ॥ नारद, दायभाग 17 ; on this वि. र. p. 565 states 'अथापुत्रो यदि मातामहस्तदा तस्य पुत्रः कानीनः सहोढश्च । सपुत्रश्चेत्तदा वोढुः, उभयोरपुत्रत्वे चोभयोरिति पारिजातः'. The मद. पा. p. 562, however, says about कानीन 'तत्र वोढुरित्युपादानाद्विवाहिता चेत्तदा वोढुर्नो चेन्मातामहस्येत्येतदवगम्यते'.

Śunaḥśepa was a krīta son. *Svayaṁdatta*—Vas. (17. 33–35) says that Śunaḥśepa became the svayaṁdatta son of Viśvāmitra as stated in the Ait. Br. (referred to above in n. 1244). *Paunarbhava* (the son of a *punarbhū*)—vide H. of Dh. vol. II. pp. 608–610 for the meaning of punarbhū and the remarriage of widows (pp. 611–621).

CHAPTER XXVIII

DATTAKA (adopted son)

No branch of Hindu Law in modern times has been so fruitful in litigation as adoption. There are instances, where, fifty years after a point in the law of adoption was deemed to have been settled by a Full Bench decision, the Privy Council intervened and overruled the Full Bench decision in spite of its usual practice to follow the rule of *stare decisis.* The medieval digests are full of varying interpretations of the same smṛti texts and the law of adoption differs from province to province according to the authoritative medieval works and modern case law. Voluminous works like those of Shastri Golapchandra Sarkar and of Mr. Kapur have been written on the subject of adoption in all its details. There is so much bewildering confusion and so much case law on the several aspects of adoption that it is only legislation that can resolve the tangled skein of the modern law of adoption. In this section an attempt will be made to present the law of adoption as evolved by the smṛtis and medieval works and only some important cases bearing in various ways on the ancient law will be cited.

It has been shown above (pp. 641,657) how even in the times of the Ṛgveda the son of the body was eagerly sought for and how the adoption of another man's son was declared to be not worthy of being thought of. Even so late an author as Śukra (II. 31) says that the adopted and other secondary sons should never he thought as one's sons, since on seeing a rich man they desire to be adopted[1252a]. Yet Vedic Literature contains some references to adopted sons. In the Tai. S. VII. 1. 8. 1 we come across the the story of Atri,[1252b] who gave an only son in adoption to Aurva in these words : 'Atri gave his son in adoption to Aurva

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1252a. मनसापि न मन्तव्या दत्ताद्याः स्वसुता इति । ते दत्ताद्यभिवाञ्छन्ति दृष्ट्वा यद् धनिकं नरम् । शुक्रनीति II. 31.

1252b. अत्रिरददादौर्वाय प्रजां पुत्रकामाय । स रिरिचानोऽमन्यत निर्वीर्यः शिथिलो यातयामा स एतं चतूरात्रमपश्यत्तमाहरत्तेनायजत ततो वै तस्य चत्वारो वीरा आजायन्त सुहोता सूद्गाता स्वध्वर्युः सुसभेयः । तै. सं VII. 1. 8. 1. For चतूरात्र, vide कात्या. श्रौ. 23. 1. 7 and आश्व. श्रौ. XI. 1. 16-26.

who desired to have a son. He (Atri), having become empty (as it were, by giving away his only son), thought himself to be destitute of strength, to be weak and worn out (lit. stale). He (Atri) saw this *caturātra* (a sacrifice of that name lasting for four days). He made preparations for it and performed that sacrifice. Then he had four valiant sons born to him, a good Hotṛ, a good Udgātṛ, a good Adhvaryu and a good *sabheya* (skilful speaker in an assembly)'. The story of Sunaḥśepa in the Ait. Br. (33) shows that Viśvāmitra, though he had already one hundred and one sons, adopted Śunaḥśepa under the name Devarāta, with the consent of his fifty-one sons (with Madhucchandas[1253] at their head), though the elder 50 sons disobeyed their father. It must be supposed that the later rule allowing only a sonless man to adopt did not apply to Viśvāmitra.

The sūtras and smṛtis contain hardly anything about the dattaka except his name (among the 12 kinds of sons) or the definition, as in Baud. Dh. S. II. 2. 24, Manu IX. 168, Yāj. II. 130, Viṣṇu Dh. S 15. 18–19, Nār. (dāyabhāga 46). The Vas. Dh. S. is an exception. It not only gives a definition (in 17. 28–29), but is one of the earliest smṛti texts to dilate on the rules about adoption (in 15. 1–9). What it says may be set forth in one place. "Man produced from seed and blood owes his birth to his mother and father. (Hence) the mother and father have power to give, to sell or to abandon him. But one should not give or accept an only son, for, he is required to continue the line of his ancestors. A woman should neither give nor receive a son (in adoption) except with the permission of her husband. One about to take a son in adoption should, after having invited his kinsmen, having informed the ruler (of the intended adoption) and having performed in the middle part of his house a *homa* with the *vyāhṛtis*, take only him who is closely related and who is a kinsman not remote (in habitation and speech). If a doubt arises (as to the family of the person to be adopted) he (the person desiring to adopt) should treat one whose kinsmen are in a remote place as if he were a śūdra; for it is declared (in the Brāhmaṇa or Vedic works) 'by means of one (son, aurasa or adopted) he (the adopter) saves many.' If, after a son is taken (in adoption), an aurasa is born (to the adopter) the adopted son shall be the recipient of a fourth

1253. सहोवाच मधुच्छन्दाः । पञ्चाशता सार्धं यन्नः पिता संजानीते तस्मिंस्तिष्ठामहे वयम् । पुरस्त्वा सर्वे कुर्महे त्वामन्वञ्चो वयं स्मसि । इति । ऐ. ब्रा. 33, 6. This is q. by the दत्त. मी. p. 17.

share"[1254]. Manu IX. 141 refers to the adoption of a son who is not of the same gotra as the adopter and IX. 142 sets out the results of adoption. The other principal ancient texts quoted by the D. M. and V. Mayūkha are those of Atri, Śaunaka,[1255] Śākala and the Kālikāpurāṇa. The Mit. does not contain more than a few lines on the *dattaka*. It is only in such late works (belonging to the 17th century and later times) like the V. Mayūkha, the Dattakamīmāṁsā, the Saṁskāra-kaustubha, the Dattakacandrikā, that the dattaka receives an elaborate treatment. In modern times the D. M. and D. C. (which is branded as a forgery by some Bengal writers)[1256] have been regarded by

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1254. शुक्रशोणितसम्भवः पुरुषो भवति मातापितृनिमित्तकः । तस्य प्रदानविक्रयत्यागेषु मातापितरौ प्रभवतः । न त्वेकं पुत्रं दद्यात्प्रतिगृह्णीयाद्वा । स हि सन्तानाय पूर्वेषाम् । न स्त्री पुत्रं दद्यात्प्रतिगृह्णीयाद्वान्यत्रानुज्ञानाद्भर्तुः । पुत्रं प्रतिग्रहीष्यन् बन्धूनाहूय राजनि च निवेद्य निवेशनस्य मध्ये व्याहृतिभिर्हुत्वा अदूरबान्धवं बन्धुसंनिकृष्टमेव प्रतिगृह्णीयात् । सन्देहे चोत्पन्ने दूरेबान्धवं शूद्रमिव स्थापयेत् । विज्ञायते ह्येकेन बहूंस्त्रायत इति । तस्मिंश्चेत्प्रतिगृहीत औरसः पुत्र उत्पद्येत चतुर्थभागभागी स्याद्दत्तकः । वसिष्ठ 15. 1-9. The Baud. Gṛhyaśeṣasūtra II. 6 has the first five and the last sūtras out of these. In Aparārka pp. 737-738, V. R. p. 568, the V. Mayūkha p. 112, V. P. pp. 477-478 and in the D. M this passage is quoted. The V. Mayūkha reads स हि जायते पुरुषः for स हि...पूर्वेषाम्, while the वि ता. (folio 124) reads स हि...पूर्वेषाम्. The Mit. on Yāj. II 130 quotes a portion of this passage. On स हि सन्तानाय the V. R. p. 569 explains 'सन्तानोच्छेदे हि पिण्डोदकक्रियानिवृत्तिर्महान्दोष इति प्रकाशः'. Aparārka pp. 737 and Sm. C. II. p. 192 read असंनिकृष्टमेव and explain respectively 'असम्बन्धिनमेव' and 'संनिकृष्टभ्रातृपुत्रादिव्यतिरिक्तमेव गृह्णीयात्', but these explanations are not good, since the brother's son is recommended as the best for adoption according to others. Therefore the explanation of V. R. p. 569 that असंनिकृष्टमेव means असंनिकृष्टमपि is preferable. The whole of this passage of Vas. except the last sūtra is quoted in *Ganga Sahai v. Lekhraj* 9 All. 253 at p. 300 and the first five sūtras in *Tulshi Ram v. Behari Lal* 12 All. 328,338 and *Jogesh Chandra v. Nrityakali* 30 Cal. 965 at p. 972.

1255. Vide Appendix for Saunaka's verses on adoption and for Baud. gṛhya-śeṣasūtra.

1256. As to the tradition among Bengal Pandits that the Dattaka-candrikā was fabricated by a pandit called Raghumaṇi to support the claim of an adopted son to a *Rāj*, vide Golapchandra Sarkar's Tagore Law Lectures on adoption (2nd. ed. of 1916 pp. 122-126). It may, however, be noted that in *Bhagwan v. Bhagwan* 17 All. 294, 313 Mr. Justice Banerji refused to place any reliance on the tradition.

the Privy Council as of the highest authority in matters of adoption. In *Collector of Madura v. Mootoo* 12 Moo. I. A. 397 at p. 437 the P. C. observe: 'Of the Dattakamīmāṁsā of Nanda Paṇḍita and the Dattaka. Candrikā of Devaṇṇa Bhaṭṭa, two treatises on the particular subject of adoption, Sir William Macnaghten says that they are respected all over India; but that when they differ the doctrine of the latter is adhered to in Bengal and by the southern Jurists, while the former is said to be the infallible guide in the provinces of Mithila and Benares'. But Jolly (T. L. L. p. 166) gives a far more correct estimate of the value of the D. M. when he says 'It is simply a misfortune that so much authority should have been attributed in the courts all over India to such a treatise as Nanda Paṇḍita's Mīmāṁsā which abounds more in fanciful distinctions than perhaps any other work on adoption and it is high time that the numerous other treatises on adoption should be thoroughly examined and given their due weight'. In *Bhagwan v. Bhagwan* 26 I. A. 153 at p. 161 the P. C. observe 'To call it (the Dattakamīmāṁsā) infallible is too strong an expression and the estimates of Sutherland and of West and Bühler seem nearer the true mark; but it is clear that both works must be accepted as bearing high authority for so long a time that they have become embedded in the general law'. Yet even these works have been set at naught and departed from by Courts in India on many points as will appear in the sequel.

The principal matters to be discussed under adoption are: object of adoption, persons that may legally take in adoption, persons that may give in adoption, persons that may be taken in adoption, the requisites and ceremonies of adoption and the results of adoption.

The objects of adoption—Atri (verse 52) quoted above in note 1231 declares that that man alone who has no son should always secure a substitute for a son with all possible effort for the sake of securing the offering of piṇḍas (funeral and śrāddha cakes) and water. The D. C. quotes this verse and also another ascribed by it to Manu[1257] in which the object of adoption is said to be twofold, viz. securing spiritual benefit from the piṇḍas and water (offered by him) and perpetuating the name and family of the adopter. In one of the latest cases on adop-

1257. तत्राह मनुः । अपुत्रेण सुतः कार्यो यादृक् तादृक् प्रयत्नतः । पिण्डोदकक्रियाहेतोर्नामसङ्कीर्तनाय च ॥ दत्त. च. p. 2.

tion that revolutionized the law the Privy Council[1258] emphasize the peculiar religious significance that has attached to the son among all classes of Hindus, refer to the 9th chapter of Manu verses 106, 107, 137, 138 of which are instinct with this doctrine, hold that the foundation of the Brahminical doctrine of adoption is the duty which every Hindu owes to his ancestors to provide for the continuance of the line and the solemnization of the necessary rites and that in this doctrine the devolution of property, though recognized as the inherent right of the son, is altogether a secondary consideration.

Persons who can give in adoption—The primary right to give in adoption is that of the father, who can do so without consulting the mother.[1259] The mother cannot without the husband's permission give her son in adoption while the father is alive and capable of consenting. But the mother alone can (as said by Manu IX. 168, Yāj. II. 130) give her son in adoption if the father be dead or if he is incapable of giving consent or has entered the order of ascetics, provided he has not expressly or impliedly prohibited her to do so. If both parents are dead no one else, not even the paternal grand-father or the step-mother or a brother, can give a man in adoption. If A has a son B and is then given in adoption by his mother into another family, it was held in *Martand v. Narayan* that A still retained his power as father to give away B in adoption (I. L. R. 1939 Bom. 586 F. B.). This decision has been dissented from by the Nagpur High Court in *Sharaduchandra v. Shantabai* (I. L. R. 1944 Nag. p. 544, F. B.). But the reasons given by the Nagpur High Court are not convincing and the judges seem to be influenced by the dictum of the P. C. that the adopted son is

1258. Vide *Amarendra Man Singh v. Sanatan* 60 I. A. p. 242. Though it may be conceded that in the majority of cases the object of the *adopter* is religious, the object of the *giver* and of the *person adopted* (if he is grown up) is far from religious. The main object of the latter two at least in modern times is to secure wealth without effort and hardly any religious motives enter into their minds. No one gives a son in adoption to a poor man, though a poor man has a soul to save as much as a rich man. Besides in adoption by widows, their motive is very often far from religious. They often adopt out of pique against their husband's brothers or nephews and for benefiting themselves monetarily by making agreements with the adopted sons to share the property with them.

1259. अत एव माता पिता वा दद्यातामिति मनुना मातुर्भर्तृज्ञानसापेक्षत्वाज्जनकत्वं स्वतन्त्रज्ञाननैरपेक्ष्यात् पितुर्मुख्यमत्वं जनकत्वसामान्यादुभयोर्दातृत्वमभिप्रेत्य पूर्वपूर्वास्वरसादुत्तरोत्तरमभिहितम्। दत्त. मी. pp. 119-121.

just like an aurasa son except in a few well defined cases. It cannot be supposed that the P. C. knew all the texts of the *nibandhas* dealing with adoption. Though the Bombay High Court held in *Putalabai v. Mahadu* 33 Bom. 107 that a mother did not by her remarriage forfeit her right to give in adoption her son by the first husband, that decision was subsequently overruled in *Fakirappa v. Savitrewa* 23 Bom. L. R. 482 (F. B.) which decided that after remarriage a widow has no power to give in adoption her son by the first husband. The same High Court held in *Shamsing v. Shantabai* (25 Bom. 551) that a Hindu father, who, after the birth of a son, became a convert to the Moslem faith, did not by reason of his conversion lose his power of giving his son, who remained a Hindu, in adoption though the physical act of giving in adoption, being accompanied by religious ceremonies, may have to be delegated by him to a Hindu. This decision was based on the Caste Disabilities Removal Act of 1851 (for which see above p. 547, n. 1021). This decision is against the spirit of the ancient Hindu Law.

What persons may adopt a son.—Every male Hindu, who is of sound mind and has attained the age of discretion though he may be a minor according to the Indian Majority Act (III of 1875), can take a son in adoption provided he has no son, grandson or great-grandson, natural or adopted, living at the time of adoption. The word 'aputreṇa' in the verse of Atri (quoted above in n. 1231) is explained by the D. M. as meaning[1260] one who had no son at all or whose son is dead and as including the grandson and great-grandson. It would appear from a Bombay decision that even if a Hindu has a son, grandson or great-grandson disqualified from inheriting on the grounds mentioned above he cannot adopt (vide *Bharmappa v. Ujjangauda* 46 Bom. 455). In the Dattasiddhāntamañjarī of Bālakṛṣṇa (folio 11b) it is stated that if the aurasa son of a person is congenitally blind, dumb or deaf he can take a boy in adoption. In *Krishnaji v. Raghavendra* I. L. R. (1942) Bom. 492 it has been held, relying upon 46 Bom. 455, that a widow

1260. अपुत्रोऽजातपुत्रो मृतपुत्रो वा । अपुत्रो मृतपुत्रो वा पुत्रार्थं समुपोष्य च—इति शौनकीयात् । ... अपुत्रेण इति पुत्रपदं पौत्रप्रपौत्रयोरप्युपलक्षणम् । पुत्रेण लोकाञ्जयति० (मनु ९. १३७) इति पौत्रादिना विशिष्टलोकप्रतिपादनेन नापुत्रस्य लोकोस्तीत्याद्यलोकतापरिहारात् । दत्त. मी. p. 3 and p. 18; अत्र पुत्रपदं पौत्रप्रपौत्रयोरप्युपलक्षणम् । तयोरपि पिण्डदातृत्ववंशकरत्वाविशेषात् । दत्त. च. p. 3; अत एव जन्मान्धमूकबधिरौरसपुत्रवतः पितुर्दत्तग्रहणं सङ्गच्छते । दत्तसिद्धान्तमञ्जरी folio 11 b.

cannot adopt a son during the lifetime of her natural son who was a congenital idiot. The fact that a man is a bachelor or a widower or that his wife does not consent or that she is pregnant at the time of adoption does not prevent him from taking a son in adoption. In fact Vasiṣṭha provides for the birth of a son after a son is adopted (15. 9). It was said[1261] by Rudradhara and Vācaspati that as śūdras cannot perform *homa* with vedic *mantras* (required by Vas. quoted above on p. 663) śūdras cannot adopt a son. Others like Raghunandana, Nīlakaṇṭha, D.M. hold that a śūdra can adopt, as Śaunaka expressly allows him to do so and that the *homa* may be performed through a brāhmaṇa (as allowed by Parāśara VI. 63-64)[1262]. A wife cannot adopt during her husband's lifetime except with his express consent (as Vas. 15. 5 says).

After a man's death the only person that can adopt to him is his widow. It is as regards the power of the widow that the greatest divergence of views prevails. The basic text is that of Vas. 15. 5 (a woman should not give or take in adoption except with the assent of her husband). The resourcefulness and ingenuity of commentators, all deemed to be orthodox and all proficient in the Mīmāṁsā rules of interpretation, is illustrated nowhere better than in the interpretations of this text. Four interpretations are placed on this sūtra of Vasiṣṭha: (1) The D. M. and writers of Mithilā such as Vācaspati hold that a widow cannot adopt at all, because at the time of adoption it is impossible to have the consent of the husband (who is then dead) and because a woman cannot perform the *homa* with vedic mantras and cannot repeat the vedic passages about acceptance (which are required by Vasiṣṭha and Śaunaka); (2) In Bengal, Madras and Benares it is held that a widow may adopt under an authority from her husband given during his lifetime. The

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1261. यच्छुद्धिविवेक उक्तं वैदिकमन्त्रसाध्यहोमवति पुत्रप्रतिग्रहे शूद्रस्यानधिकार इति तदपास्तम्। समन्त्रकहोमस्तु तेन विप्रद्वारा कार्यः। उपवासो व्रतं होमस्तीर्थस्नानजपादिकम्। विप्रैः सम्पादितं यस्य सम्पन्नं तस्य तत्फलम्॥ इति पराशरोक्तेः (६. ६३-६४)। स्मार्तहरिनाथाव-प्येवमेव। व्य. मयूख p. 112. The courts hold that a śūdra can adopt.

1262. अनुशृणोति पुंस्त्वश्रवणाच्च स्त्रिया अनधिकार इति गम्यते। अत एव वासिष्ठः न स्त्री... भर्तुः। इति। अनेन विधवाया भर्त्रनुज्ञानासम्भवादनधिकारो गम्यते। ... किं च ... होमकर्तृत्वेन प्रतिग्रहसिद्धेः स्त्रीणां होमानधिकारित्वात् परिग्रहानधिकारः—इति वाचस्पतिः। न च शौनकीये आचार्यवरणाम्नानात् तद्द्वारा होमसिद्धिरिति वाच्यम्। होमसिद्धावपि प्रतिग्रहमन्त्रानधिकारेण प्रतिग्रहासिद्धेः। दत्त. मी. pp. 19 and 22-23; यत्तु समन्त्रकहोमस्य पुत्रप्रतिग्रहाङ्गत्वाद् व्याहृत्यादिमन्त्रपाठे च स्त्रीशूद्रयोरनधिकारात्तयोर्दत्तकः पुत्रो न भवत्येवेति शुद्धिविवेके रुद्रधरेणोक्तं वाचस्पतिश्चैवमाह। निर्णयसिन्धु III पूर्वार्ध p. 249.

idea is that the permission (*anujñāna*) of the husband is not required to be given just at the time of the adoption and that it may be given long before the actual adoption. (3) In Madras a widow may also adopt without[1263] her husband's authority, provided she secures the consent of the father-in-law or (if the latter be dead) of all the co-parceners of the husband, if her husband died as a member of a joint family, and if the husband was separate at the time of his death, then the consent of the father-in-law or (if he were dead) of a substantial majority of her husband's nearest sapiṇḍas. In this view the word 'of the husband' (in Vasiṣṭha) is taken as only illustrative and not literally. (4) The Vyavahāramayūkha,[1264] the Nirṇayasindhu, the Saṁskārakaustubha, the Dharmasindhu, that are regarded as authoritative in Bombay and Western India, hold that the passage of Vasiṣṭha refers only to a wife whose husband is alive and that a widow may adopt without the husband's authority. According to this school the husband's authority to adopt is always to be presumed, unless he has prohibited his widow expressly or by necessary implication from adopting. The D. C. appeals to the general maxim 'another's (or the opponent's) view if not dissented from may be taken as having been approved'.

1263. In *Balsubramanya* v. *M. Subbayya* L. R 65 I. A. 93 at p. 99 the Privy Council say: 'their Lordships are not laying down that the requisite authority must necessarily be express but they agree with the District Judge that in order to constitute an implied authority there must be circumstantial evidence of a cogent character'. Vide *The Collector of Madura* v. *Mootoo* 12 Moo. I. A. 397 pp. 435–36 where three of these four interpretations are pointed out.

1264. भर्त्रनुज्ञा तु सधवाया एव दृष्टार्थत्वात् । विधवायास्तु तां विनापि पितुस्तदभावे ज्ञातीनामाज्ञया भवति । ... अतो यस्यामवस्थायां भर्त्रनुज्ञा प्राप्ता सैवात्रानूद्यते न त्वपूर्वा विधीयते । अतो विधवाया भर्तुराज्ञां विनाप्यधिकारः । व्य. मयूख p. 113 ; तत्रैव वसिष्ठः ' न त्वेवैकं पुत्रं ... भर्तुरिति । इदं च भर्तृसत्त्वे । अन्यथा दद्यान्माता पिता वा यं स पुत्रो दत्त्रिमः स्मृत इति मत्स्यव्यासवचोविरोधः स्यात् । दानं प्रतिग्रहोपलक्षणम् । निर्णयसिन्धु III पूर्वार्ध p. 249 ; स्त्रियास्तु जीवति भर्तरि तदनुमतौ । प्रोषिते मृते वा तदनुज्ञां विनापि । यथा वसिष्ठः ' न स्त्री ... भर्तुः ' । इति । अनुमतिश्चाप्रतिषेधेऽपि भवति । अप्रतिषिद्धं परमतमनुमतं भवतीति न्यायात् । दत्त. च. p. 18 ; तच्चाशास्त्रीयकाम्यव्रतादिधर्माचरण इव पुत्रप्रतिग्रहेऽपि नापुत्रस्य लोकोऽस्तीत्यादिसामान्यशास्त्रादेव विधवाया अधिकारः । उक्तविधदत्तकस्वीकारः पुंभिरिव स्त्रीभिरपि सधवाभिर्विधवाभिश्च कार्यः । वन्ध्या वा मृतपुत्रा वा पुत्रार्थं समुपोष्य चेति शौनकीयवचस्यविशेषश्रवणात् । सं. कौ. p. 160. It will be noticed that the सं. कौ. reads वन्ध्या वा मृतपुत्रा वा for अपुत्रो मृतपुत्रो वा in शौनक's text which is the reading of all other works, the former being probably a fabrication inserted to support widow's claims to adopt. The D. M. p. 3 notices the reading वन्ध्यो मृतप्रजो वापि in Saunaka's text. For the maxim अप्रतिषिद्धं &c. vide शाङ्करभाष्य on वेदान्तसूत्र II. 4. 12.

There is a large volume of case law about the construction of the authority to adopt, about the rights of co-widows in the matter of adoption, about the limits of a widow's power, which are deemed to be outside the purview of this work.

As regards the power of a widow to adopt in the Bombay school, when her husband was joint at the time of his death, the case law has fluctuated from time to time. Only a few cases may be referred to here. In *Ramji v. Ghamau* 6 Bom. 498 (F. B.) a Full Bench of the Bombay High Court held that a widow, whose husband was a member of a joint family at the time of his death, could not adopt when she has not the authority of her husband or the consent of the husband's undivided coparceners. After this decision had stood for 50 years the Privy Council held in *Bhimabai v. Gurunathgouda*[1265] L. R. 60 I. A. p. 25 that the Full Bench decision had already been overruled in *Yadao v. Namdeo* (48 I. A. 513) and that a Hindu widow can adopt without the consent of her husband's

1265. In Bhimabai's case the Privy Council purport to follow the case of *Rakhmabai* v. *Radhabai* 5 Bom. H. C. R. (A. C. J.) p. 181. But in that case the husband was separate at the time of his death. The P. C. however point out that in *Yadao* v. *Namdeo* (48 I. A. 513 at p. 529) it was said that the decision in Rakhmabai's case was not based on the fact that the husband was separate at his death or on the fact that the widow when she made the adoption had the estate vested in her and it was held that that decision was equally applicable where the husband was joint. Apart from the fact that the decision of the P. C. is opposed to the general sentiment of Hindu society at present, with the greatest respect two criticisms have to be offered against the decision in Bhimabai's case. The passage of the Vyavahāramayūkha relied upon in Rakhmabai's case and in Bhimabai's case has not been correctly understood. The Mayūkha was combating the view of others that a widow cannot adopt at all. Therefore he tried to establish that a widow can adopt without her husband's authority. But the Mayūkha did not say expressly that she can adopt without any body's authority or that she can adopt even in a joint family without the consent of the coparceners or even against their wishes. On the contrary if we look at the whole context where he quotes Yāj. I. 85 and a verse of Kāt. (930) it would appear that he meant to convey that the consent of the father of the husband or of his kinsmen would be necessary. Further, no one drew the attention of the P. C. to another passage of the V. Mayūkha where it summarizes the rite of adoption and states 'Women whose husbands are alive are entitled to adopt with the permission of their husbands ; failing the husband, a woman can adopt with the permission of the (husband's) father and the rest': 'स्त्रीणां सधवानां भर्त्रनुज्ञया भर्त्रभावे पित्रादिनाम्' व्य. मयूख p. 120.

co-parceners, when the husband was a member of a joint family at the time of his death. This decision was carried further by Amarendra's case (60 I. A. 242) by holding that when a widow, who had authority to adopt, adopted even after the estate had devolved on a male collateral heir such adopted son would take the estate and deprive the heir of it. As any widow was held to be able to adopt in Bombay without anybody's consent, hundreds of adoptions have taken place, which came and are coming before the courts. Another Full Bench case held that when a Hindu coparcenary came to an end on the death of the last surviving coparcener and the family property became vested in his heir, a subsequent adoption by the widow of a predeceased coparcener was valid, but it did not revive the coparcenary nor did it vest the property of the former coparcenary in the adopted son (*Balu v. Lahoo* I. L. R. 1937 Bom. 508). When a co-parcenary was broken up by partition among the members, it was held[1266] that the widow of a coparcener who died long before the partition cannot make a valid adoption and reliance was placed on a passage of the Vīramitrodaya (quoted below).[1267]

But these decisions have been dissented from in *Bajirao v. Ramkrishna* I. L. R. (1941) Nagpur 707 and in *K. R. Sankarlingam Pillai v. Veluchami Pillai* I. L. R. (1943) Mad. 309 (F. B.), where it has been laid down that when the surviving coparceners of a joint Hindu family were in possession of the joint family properties which they obtained in a partition among themselves after the death of a coparcener and subsequent to the partition a valid adoption was made to the deceased coparcener by his widow the adopted son was entitled to reopen the partition. They rely by way of analogy on the provisions of Yāj. that the posthumous son can reopen a partition already made and also on that of the disqualified heir when the disqualification is removed and on the dicta in some cases that an adoption dates back to the date of the death of the adoptive father. But no smṛti text and no digest has extended the exceptional rules about the posthumous son and the disqualified heir to a son

1266. Vide *Hirachand v. Sojpal* I. L. R. 1939 Bom. 512 and *Irappa v. Rachayya* I. L. R. 1940 Bom. 42.

1267. अत्र ब्रूमः। प्रत्येकवृत्तीनि सम्बन्धविशेषात्स्वत्वानि स्वाम्यानि च सन्त्येव। परस्परविभागानन्तरे परस्परस्वाम्याभावादीयमध्ये तानि नश्यन्ति। परमरणपारिव्राज्यादिनेवेति न काप्यनुपपत्तिः। व्यवस्थापनमपीदृशमेव, अन्यथैकदेशे उत्पादनमित्येव वदेत्। अत एव विनाशमात्रकल्पना न तु स्वत्वान्तरोत्पादकल्पना। व्य. म. pp. 431-32.

adopted after partition. Their reasoning as regards the Bombay cases is not satisfactory. It amounts to this that as between the separating co-parceners the coparcenary may be extinct but as to the subsequently adopted son it exists i. e. a coparcenary is extinct and existing at the same time, which, to use no stronger expression, appears rather strange. Besides the general rule is that partition is made only once (Manu IX. 47). The cases of the posthumous son and of the disqualified heir are expressly provided by way of exceptions. The usual rule is that exceptions are to be strictly limited to the matters expressly stated and are not to be extended by analogy to cases not covered by the words of the exception and that other cases are governed by the general rule. It is a canon of interpretation in Hindu Law that a special text forming an exception to a general text should be construed strictly and applied only to the cases clearly falling within it (*Gangu v. Chandrabhagabai* 32 Bom. 275, 283, *Hanmant v. Ganesh* 43 Bom. 612, 624). Further, a Hindu widow is not compelled to adopt at any particular time; she may adopt at any time during her life. In *Raje Vyankatrao v. Jayavantrao* 4 Bom. H. C. R. (A. C. J.) 191 it is noticed that the widow in that case adopted 71 years after her husband's death. If the reasoning of the learned Judges of Nagpur and Madras is correct then when three or four generations have succeeded to the separating coparceners, an adopted son can reopen the partition after three quarters of a century This result, to say the least, would be most unreasonable. The Nagpur High Court observes that every Hindu widow is a potential mother. This is a fiction which has been carried too far by that court and by the Privy Council. A woman in the order of nature can hardly ever have an *aurasa* son beyond the age of fifty or so, but when a fiction is employed a woman can bring into existence a son even when she is 80 or 90. The Privy Council have approved of the Nagpur and Madras decisions recently in *Anant v. Shankar* 46 Bom. L. R. 1. They hold that a Hindu family cannot be brought to an end while it is possible in nature or law to add a male member to it or while there is still a potential mother if that mother in the way of nature or law brings in a new member. In *Ramchandra v. Shankar* 47 Bom. L. R. 121 (F. B.) the Privy Council decision in *Anant v. Shankar* has been followed and it is held that the decision in *Balu v. Lahoo* has been expressly overruled by the Privy Council. The consequences of these latest decisions will be most disastrous for Hindus. In Amarendra's case the P. C. state that there

must be some limit to the power of a widow to adopt or some conditions in which it would be contrary to the spirit of the doctrine to admit its continuance or inequitable in the face of other rights to allow it to take effect (L. R. 60 I. A. 242 at p. 249). In *Madana Mohana v. Purshothama* L. R. 45 I. A. 156 the P. C. approving of *Ramkrishna v. Shamrao* 26 Bom. 526 (F. B.) held that, when a man dies leaving a widow and a son and that son dies leaving his own son or a widow to continue the line by adoption, the power of the former widow comes to an end and cannot be revived ; that is, they were prepared to hold that the grandmother succeeding to her grandson who died unmarried could not make a valid adoption and allowed the grandfather and his ancestors to remain without the religious benefits that a son adopted by the grandmother would have conferred (in spite of the 9th chapter of Manu on which they rely in Amarendra's case). According to the recent rulings any widow whose husband died a member of a joint Hindu family may adopt *at any time* even when the other members become separate and may remain separate for 50 years or more and yet a large slice of the estate may be taken away after several generations have succeeded, laboured and acquired a vast estate. Further, it is not clear how far the P. C. will go in their solicitude for the adopted son. Suppose three brothers separate and one of them sells the property that came to his share. If the partition is to be opened for the benefit of a son subsequently adopted by a predeceased member's widow, will the purchaser be affected or not (supposing the sale is within 12 years of the adoption)? Supposing that the last surviving member of a family dies leaving a married daughter and a predeceased son's widow and the daughter inherits an absolute estate (as she does in Bombay) and remains in possession for 30 years, is it meant that a son thereafter adopted by the widowed daughter-in-law can divest an estate vested for thirty years in a married daughter who is not a member of the family at all after her marriage? The recent P. C. decision in *Anant v. Shankar* appears to indicate that whatever the length of time the adopted son will oust a collateral to whom the estate may have gone by inheritance. Intending purchasers have become afraid that there is no knowing how far the P. C. may go. These decisions will lead on to hurried sales of joint family property at whatever price may be fetched immediately a coparcener dies leaving a widow. The result of the several decisions of the P. C. has been that properties of

Hindu families in which widows of predeceased coparceners exist are not easily saleable and do not yield their proper market value. The inroads on the ancient joint family system of the Mitākṣarā have been so many that only the shell remains; the burdens are there, but the soul is gone, what with the right of each coparcener to alienate his share for consideration, the Gains of learning Act, Act 18 of 1937, the decisions of the P. C. about adoption, sec. 39 of the Transfer of Property Act. It would be better if the Legislature declared that the joint family system of the Mitākṣarā type has been abrogated, if all the innovations introduced by legislation and judicial decisions are to be kept intact.

A widow who has attained years of discretion may adopt although she is a minor according to the Indian Majority Act (of 1875). It has been held in Bengal that an unchaste[1268] widow cannot adopt, but in the Bombay Presidency it has been held that a śūdra widow, though unchaste, may make a valid adoption.[1269] If a man dies leaving a widow D and two sons A and B, who form a joint Hindu family, and subsequently A dies leaving a widow C and his brother B, and if B dies unmarried and the mother D succeeds as heir to her unmarried son B, she has still the power to adopt a son. The duty of continuing the line was cast upon both A and B and not on A alone and therefore when A dies that duty is cast on the surviving coparcener B. Therefore the proposition laid down in *Ramkrishna v. Shamrao* cannot apply and the mother of B can adopt (vide *Anant v. Dnyaneshwar* 46 Bom. L. R. 353).

Who may be adopted.

The person to be adopted must be a male according to the Vyavahāramayūkha[1270] which relies on the analogy of *upanayana* (that only a male undergoes, as stated in the ancient text '*aṣṭavarṣaṁ brāhmaṇam-upanayīta*). This has been followed by

1268. Vide *Sayamalal v. Saudamini* 5 Beng. L. R. 362.

1269. Vide *Basvant v. Mallappa* 45 Bom. 459.

1270. दत्तकश्च पुमानेव भवति न कन्या । स ज्ञेयो दत्त्रिमः सुतः (मनु ९. १६८) —इति संज्ञासंज्ञिसम्बन्धबोधकवाक्यगतेन स इति सर्वनाम्ना मातापितृकर्तृक-प्रीतिजलग्रहणकापत्ति-भिन्नकद्दानकर्मीभूतसजातीयपुंस एव—अष्टवर्षं ब्राह्मणमुपनयीत तमध्यापयीत—इति तच्छ-ब्देनाष्टवर्ष—ब्राह्मण्यपुंस्त्वोपनयनादिसंस्कृतस्यैव परामर्शात् । व्य. मयूख pp. 108-109 For अष्टवर्षं ब्राह्मणमुपनयीत, vide आप. गृ. IV. 10. 2 and सुदर्शनाचार्य's gloss thereon. The धर्मसिन्धु says : एवं दत्तकन्याया अपि स्वीकार उक्तविधिना कार्यः । तत्र वरगोत्रोत्पन्नाया ग्रहणे विवाहे गोत्रद्वयवर्जनं मान्यत् । पुत्रपत्न्योरभावे दत्तकन्यैव पितृधन-भागिनी । (III पूर्वार्ध p. 162).

the Indian Courts.[1271] But the D. M. (pp. 112-116), Saṁ. K. (p. 188) and Dharmasindhu[1272] relying upon such instances as that of Śāntā, the daughter of king Daśaratha (who was adopted by king Lomapāda) and of Pṛthā, who was the daughter of Śūra and was adopted by Kuntibhoja, say that even a girl may be adopted. Pannalal in 'Kumaun local customs' states that a girl may be adopted as a daughter in Kumaun by custom. The person to be adopted must be of the same caste as the adopting father. Yāj. II. 133, providing that the twelve kinds of sons that offer the piṇḍa and take the wealth one after another in order, applies only to sons of the same caste. Śaunaka also requires sameness of caste. Manu IX. 168 employs the word 'sadṛśam', which was interpreted by Medhātithi as meaning 'similar to the adopter in qualities and not in caste'. Medhātithi[1273] expressly states that a brāhmaṇa may adopt a kṣatriya boy. But Kullūka and the other commentators of Manu, the V. Mayūkha and other works hold that the boy must be of the same caste. The Saṁ. K. p. 150 and Dharmasindhu go a step further by saying that even a brāhmaṇa should adopt another of the same country. The Vāyupurāṇa (99. 137-139) narrates that Bharata, son of Duṣyanta, adopted Bharadvāja, son of Bṛhaspati and a brāhmaṇa, who then became a kṣatriya.[1274] The courts accept the view of Kullūka and the rest. It is likely that courts may allow a boy from a subcaste of each of the four principal varṇas to be adopted by a man belonging to another subcaste of the same varṇa.[1274a] Śaunaka and Vṛddha-Yāj. q. by D. C. provide

1271. Vide *Gangabai v. Anant* 13 Bom. 690, where the Vyavahāramayūkha is expressly referred to and followed in preference to D. M. and Saṁskārakaustubha. Vide also *In re Munshiram* 12 Lahore 658 at p. 661.

1272. For the quotation from the सं. कौ. vide H. of Dh. vol. I. p. 449 *n*. 1119. The D. M. adds passages from the स्कन्दपुराण, लिङ्गपुराण, हरिवंश and आदिपर्व. Vide आदिपर्व 111. 2-3 (cr. ed. chap. 104) for the adoption of कुन्ती, and रामायण, बालकाण्ड, 9th chap. for that of शान्ता.

1273. सदृशं न जातितः किं तर्हि कुलानुरूपैर्गुणैः । क्षत्रियादिरपि ब्राह्मणस्य दत्तको युज्यते । मेधा. on मनु IX. 168. विप्रादीनां वर्णानां समानवर्ण एव । तत्रापि देशभेदप्रयुक्त-गुर्जरत्वान्ध्रत्वादिना समानजातीय एव । धर्मसिन्धु III पूर्वार्ध p. 158.

1274. तस्माद् दिव्यो भरद्वाजो ब्राह्मण्यात्क्षत्रियोऽभवत् । द्विमुख्यायननामा स स्मृतो द्विपितृकस्तु वै ॥ वायु 99. 157. द्विमुख्यायन seems to be a corrupt form of द्व्यामुष्यायण.

1274a. In *Raj Nandini v. Aswini Kumar* I. L. R. (1941) 1 Cal 457 the adoption of a Vaidya child by a Kāyastha was upheld in the Sylhet district, as both are now treated as śūdras.

that the *dattaka* may be of a different caste, but that such a son will not take the wealth.[1275] In spite of the words of Vas. 15. 3 and of Śaunaka (that one having an only son should not give him) the courts have held that even an only son may be given or taken in adoption and that the words of Vasiṣṭha are merely recommendatory. Vide *Sri Balusu Gurulingaswami v. Sri Balusu Ramalakshmamma* 26 I. A. p. 113 and *Vyas Chimanlal v. Vyas Ramchandra* 24 Bom. 367 (F. B.). In connection with the force of the words of Vas. 15. 3-4 stating why an only son should not be given or taken, Jaimini's rule contained in what is called the 'hetuvan-nigadādhikaraṇa'[1276] (Jai. I. 2. 26-30) came in for very exhaustive discussion in *Beni Prasad v. Hardai Bibi* 14 All. 67 (F. B.) and *Radha Mohun v. Hardai Bibi* 26 I. A. pp. 113, 146. There are several Vedic passages like this, 'he offers the grains into the fire with a winnowing basket, for food is prepared with the help of it' (Tai. Br. I. 6. 5). The question is whether such sentences put forward a reason for what is enjoined in the preceding portion or whether they are intended merely as *arthavādas* (i. e. for the praise of what is stated in the preceding part of the passage). Jaimini concludes that they are for the purpose of praise[1277] alone.

1275. यदि स्यादन्यजातीयो गृहीतोपि सुतः क्वचित् । अंशभाजं न तं कुर्याच्छौनकस्य मतं हि तत् ॥... व्यक्तमाह वृद्धयाज्ञवल्क्यः । सजातीयः सुतो ग्राह्यः पिण्डदाता स रिक्थभाक् । तदभावे विजातीयो वंशमात्रकरः स्मृतः । ग्रासाच्छादनमात्रं तु लभते स तद्रिक्थिनः ॥ इति । दत्त. च. p. 7 ; दत्त. मी. quotes the verse यदि स्यात् & as शौनक's (p. 104) and also as वृद्धगौतम's(p. 52).

1276. हेतुर्वा स्यादर्थवत्त्वोपपत्तिभ्याम् । स्तुतिस्तु शब्दपूर्वत्वादचोदना च तस्य । जै. I. 2. 26-27 ; अथ ये हेतुवन्निगदाः शूर्पेण जुहोति तेन ह्यन्नं क्रियत इत्येवमादयस्तेषु सन्देहः । किं स्तुतिस्तेषां कार्यमुत हेतुरिति । किं प्राप्तम् । हेतुः स्यादन्नकरणं होमस्य । शबर; इह ये हेतुवन्निगद्यन्ते हिशब्दादिभिर्न च परमार्थहेतवस्ते उदाहरणम् । तन्त्रवार्तिक.

1277. Nigada means 'a sentence or sacrificial formula' and 'hetuvat' means 'containing a word or words (like 'hi') which are generally used to indicate a reason' for a statement already made. In preparing food from grains, the śūrpa is required for winnowing them to free them from husk &c. as also are required the pan or pot for boiling the grains and a ladle for stirring the grains when they are being boiled. The *Śruti* passage provides that with the help of a śūrpa the homa is made of Karambhapātras (pots full of husked grains of *yava* slightly fried on the Dakṣiṇa fire, ground and mixed with curds) in the Varuṇapraghāsa, one of the *cāturmāsyas*. Vide H. of Dh. vol. II. pp. 1095-96 and 1098 for the śūrpa used as a *juhū* ladle. If the latter part of the passage contains a reason for the first part, then it would follow that the pot or ladle (both of which are useful in getting food

(*Continued on the next page*)

The eldest son also should not be taken in adoption, since, as the Mit. (on Yāj. II. 130) puts it, it is the eldest son alone who is the foremost in serving the purposes of a son as regards his genetive father acc. to Manu IX. 106 which says 'a man becomes one having a son (a father) by the mere fact of the birth of his (first) son and becomes free from the debt owed to

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(*Continued from the last page*)

prepared) may equally be used instead of the śūrpa. But the object of the latter half is not to assign a reason, but rather to praise and recommend the śūrpa as the means of making the homa and so nothing but the śūrpa can be employed in making the offering. The Veda is the final authority in all matters pertaining to sacrifice; it does not stand in need of giving reasons for its prescriptions but it may eulogise an act to induce people to perform it. Therefore in the hetuvan-nigadādhikaraṇa Jaimini does not lay down (as thought by Mandlik and by the High Court in 14 All. 67, pp. 73, 84, 125) that when a text is supported by a clause containing words of reason, it should be regarded as merely recommendatory (and not obligatory), but what Jaimini lays down is that clauses containing words generally meaning 'reason' are to be construed as *arthavādas* (praises) of the obligatory rule contained in a previous clause. Mr. Mandlik says (p. 499 of his 'Hindu Law') 'It is a rule of the Pūrvamīmāṁsā that all texts supported by the assigning of a reason are to be deemed not as *vidhi* but simply as *arthavāda* (recommendatory). When a text is treated as an arthavāda it follows that it has no obligatory force whatever. Śabarasvāmin constructs an adhikaraṇa on this head which he calls 'hetuman-nigadādhikaraṇa' (quoted in 14 All. 67 at p. 73). This is entirely wrong as shown above and the adhikaraṇa is not called 'hetuman etc.' but 'hetuvan etc.'. Acc. to Jaimini's rule the words of Vas. 15. 3 'naikaṁ putram' contain a vidhi (an obligatory rule), while the following clause containing the word 'hi' (indicative of a reason) '*sa hi santānāya pūrveṣām*' is merely an arthavāda, which praises the vidhi by emphasizing the importance of a son. Sarkar in his 'Mīmāṁsā Rules' (pp. 175-176) correctly represents the meaning of Jaimini, though in somewhat obscure language. The decisions in 14 All. 67 and 26 I. A. 113 are correct so far as the Mit. and the Mayūkha are concerned, though the judgments in the former case are wrong in what is regarded to be the meaning of Jaimini's aphorisms constituting 'hetuvan-nigadādhikaraṇa'. The Privy Council in 26 I. A. 113 at p. 146 refer to the supposed rule of Jaimini that all precepts supported by the assignment of a reason are to be taken as recommendations only, but they express themselves guardedly and say that the rule is rather startling and they would not admit it to be true unless they made an intimate study of the smṛtis. The commentaries will make the Pūrvamīmāṁsā position clear. अस्मत्पक्षे पुनः शूर्पं स्तूयते । तेन ह्यन्नं क्रियत इति वृत्तान्तान्वाख्यानं न च वृत्तान्तज्ञापनाय किं तर्हि प्ररोचनायैव । तस्माद्धेतुवन्निगदस्यापि स्तुतिरेव कार्यमिति । शबर on जै. I. 2. 30. The शास्त्रदीपिका states 'न च वेदेनोच्यमानं शूर्पस्य होमसाधनत्वं हेतुमपेक्षते वेदस्यैव तत्र प्रमाणत्वात् । अर्थवादस्त्वपेक्षितः प्ररोचनार्थत्वेन । तस्मादर्थवादत्वम् ।'.

the *pitṛs*'. But in modern times this rule is taken to be only recommendatory and the adoption of the eldest son is held valid as also that of an only son[1278]. The V. Mayūkha (p. 108) states: acc. to the Mit. the prohibition to give the eldest son affects only the giver but not the adopter and he criticizes the Mit. that Manu IX. 106 does not forbid the giving of the eldest son, but only provides that by the birth of the first son a man becomes free from debt (to pitṛs). So the V. Mayūkha goes a step further and holds that there is no prohibition at all either to give or take in adoption the eldest son, while the Mit., though it does not hold the adoption bad, seems to hold that the giver incurred blame. The Saṁ. K. p. 150 also does not allow the adoption of the eldest son. Two or more persons cannot adopt the same boy and if they do so the adoption by each is invalid[1279]. The Dvyāmuṣyāyaṇa adoption, to be described later on, is an exception.

The texts contain rules about preference in selecting a boy for adoption, when several are eligible. The Mit.[1280] on Yāj. II. 132 declares that the verse of Manu IX. 182 stating that 'when out of several brothers who are sons of the same father one has a son all of them become through that son persons having a son' does not provide that he becomes really the son of all but it indicates that when a brother's son is available

1278. Vide *Kashibai* v. *Tatia* 7 Bom. 221, *Tukaram* v. *Babaji* 1 Bom. L. R. 144 (for valid adoption of eldest son), where at p. 152 the following passage from the Mayūkha is referred to: ज्येष्ठेन जातमात्रेण पुत्रीभवति मानव इति ज्येष्ठस्यैव पुत्रकार्यकरणे मुख्यत्वात्स न देय इत्ययमपि निषेधो दातुरेव न प्रतिग्रहीतुरित्यपि सः। स्यादयं प्रतिषेधो दातुरेव यद्येतस्य ज्येष्ठदाननिषेधकता स्यात्। न तु सास्ति। मानाभावात्। पुत्रीभवतीत्यनेन पुत्रित्वमात्रोक्त्या ऋणापाकरणोक्तिमात्रपरत्वाच्च। अत एव पितृणामनृणश्चैव स तस्मात्सर्वमर्हति—इत्युत्तरार्धं सङ्गच्छते। व्य. मयूख p. 108. The same passage of the Mayūkha is referred to in *Vyas Chimanlal* v. *Vyas Ramchandra* 24 Bom. 367 (F. B.) at p. 375.

1279. अपुत्रेणेत्येकत्वश्रवणाच्च न द्वाभ्यां त्रिभिर्वा एकः पुत्रः कर्तव्य इति गम्यते। दत्त. मी. p. 25.

1280. यद्यपि भ्रातृणामेकजातानामेकश्चेत्पुत्रवान्भवेत्। सर्वे ते तेन पुत्रेण पुत्रिणो मनुरब्रवीत्—इति (मनु ९. १८२) तदपि भ्रातृपुत्रस्य पुत्रीकरणसम्भवेऽन्येषां पुत्रीकरणनिषेधार्थम्, न पुनः पुत्रत्वप्रतिपादनाय तत्सुता गोत्रजा बन्धुरित्यनेन विरोधात्। मिता. on या. II. 132. The same verse is वसिष्ठ 17. 10 (with variations). व्यव. नि. p. 440 quotes similar verses of हारीत and बृहस्पति. Compare विष्णुध. सू. 15. 42 also. 'भ्रातृणामेकजातानां पुत्रवत्त्वोक्तिर्यामस्य तात इतिवदौरसप्रशंसार्था। यत्तु संग्रहकारेणोक्तं यद्येकजाता बहवो भ्रातरस्तु सहोदराः। एकस्यापि सुते जाते सर्वे ते पुत्रिणः स्मृताः—इति तस्य ... देवस्वामिना तात्पर्यार्थ उक्तः—उभयत्रापि नान्यः प्रतिनिधिः कार्य इति प्रत्येन। स्मृतिच. II. p. 289. Vide स. वि. p. 395 for quotation of this passage of स्मृतिच.

for adoption another boy should not be adopted. A similar explanation had been given by an ancient commentator Devasvāmin. The D. M., D. C. (pp. 5-6) and Saṁ. K. p. 150 quote passages of Śaunaka[1281] and Śākala that a man should prefer a sapiṇḍa or a sagotra to one who is not a sapiṇḍa or of the same gotra. The D. M., D. C., the Saṁ. K. p. 150, the Dharmasindhu recommend the following order: the full brother's son, then a sagotra sapiṇḍa, then a sapiṇḍa though not of the same gotra (such as a boy from one's maternal uncle's line or a paternal aunt's descendant), then one not a sapiṇḍa though of the same gotra, then one who is neither a sapiṇḍa nor a sagotra. This order is purely recommendatory and an adoption in breach of it is quite valid. It has been recently held that an adoption is invalid if the boy adopted be congenitally and incurably deaf and dumb though not an idiot. Vide *Surendra v. Bholanath* I. L. R. (1944) 1 Cal. 139.

As to the age of the boy to be adopted there is great divergence among the medieval writers which is also reflected in the case law. In this connection certain verses of the Kālikāpurāṇa assume[1282] great importance. The V. Mayūkha and the D. C.

1281. ब्राह्मणानां सपिण्डेषु कर्तव्यः पुत्रसंग्रहः । तदभावेऽसपिण्डो वा अन्यत्र तु न कारयेत् ॥ शौनक; सपिण्डापत्यकं चैव सगोत्रजमथापि वा । अपुत्रको द्विजो यस्मात्पुत्रत्वे परिकल्पयेत् । समानगोत्रजाभावे पालयेदन्यगोत्रजम् । शाकल; both q. by दत्त. मी. p. 41 and 48, and दत्त. च. pp. 5-6. A comparatively late work called असपिण्डासगोत्रपुत्रपरिग्रहपरीक्षा (composed after about 1700 A. D., since it mentions the दत्तकमीमांसा and संस्कारकौस्तुभ) after an elaborate discussion of Ṛg. VII. 4. 7-8 and the above passages of Saunaka and Sākala states the following conclusion (D. C. College Ms. No. 133 of 1886-92 folio 16 b) 'यथा ... दाक्षिणात्यैः समर्थितं मातुलकन्यापरिणयनं ... तथा असपिण्डासगोत्रपरिग्रहोपि यस्मिन् देशे येषां कुलेऽनादिसिद्धस्तेषामेव नान्येषामिति व्यवतिष्ठते'.

1282. पितुर्गोत्रेण यः पुत्रः संस्कृतः पृथिवीपते । आचूडान्तं न पुत्रः स पुत्रतां याति चान्यतः ॥ चूडोपनयसंस्कारा निजगोत्रेण वै कृताः । दत्ताद्यास्तनयास्ते स्युरन्यथा दास उच्यते । ऊर्ध्वं तु पञ्चमाद्वर्षान्न दत्ताद्याः सुता नृप । गृहीत्वा पञ्चवर्षीयं पुत्रेष्टिं प्रथमं चरेत् ॥ कालिकापुराण q. by दत्त. मी. p. 122, नि. सि. III पूर्वार्ध p. 250, व्य. मयूख p. 114, दत्त. च. pp. 31-33 (reads यदि स्यात्कृतसंस्कारो यदि वातीतशैशवः ग्रहणे पञ्चमाद्वर्षात् पुत्रेष्टिं), सं. कौ. p. 169 (reads चूडाद्या यदि and अन्यथा अदास). The cūḍā was usually performed in the third year and the locks that were kept on the boy's head depended upon the number of the *pravara* sages of the gotra of the father. Vide H. of Dh. vol. II. pp. 260-265 for cūḍākaraṇa. So if a boy (who was असगोत्र) was adopted after cūḍā, his position would be this that some संस्कारs would have been performed with one gotra, while others would be performed with another gotra i. e. he would thus belong to two gotras. To prevent this and to complete his affiliation into the adoptive family the putreṣṭi had to be performed.

hold that the passage is of doubtful authenticity (as the verses are not found in several mss.), while the D. M. and the Nirṇayasindhu hold them to be genuine and the Saṁ. K. pp. (169-172) after referring to these views states that those verses are opposed to what is stated in the Ait. Br. about Śunaḥśepa who was adopted by Viśvāmitra as a son even after upanayana. The verses are: 'O King! that son, whose *saṁskāras* up to (including) the *cūḍā* (tonsure) ceremony are performed with the gotra of his (natural) father, does not (i. e. cannot) attain the status of the adopted son of another. When the ceremonies of cūḍā and upanayana are performed under his own gotra (by the adoptive father) the *dattaka* and the other kinds become (recognised as) sons (in the adoptive family); otherwise they are called *dāsa* (slave). After the fifth year the adopted son and the rest cannot be (recognised as) sons. Having taken one who is five years old, one (the adopter) should first perform the *putreṣṭi*'. These verses state four propositions: (1) If all saṁskāras from *jātakarma* to *cūḍā* (i. e. including it) have been performed in the family of birth that boy cannot be adopted in another family; (2) if a boy's *cūḍā* and other later ceremonies are performed in the family of adoption he is fully an adopted son; (3) a boy over five years of age cannot be adopted at all; (4) a boy whose cūḍā has been performed in the family of birth may be adopted up to five years, provided the rite called putreṣṭi[1283] is first performed in the adoptive family before any other ceremony is performed on the adopted boy. The D. M. says that the best time for adoption is up to three years, then from three years to five is the next best (*gauṇa*) and that after five no boy can be adopted. The D. C. (p. 36) holds that a boy of the three higher classes can be adopted up to *upanayana* and that a śūdra boy can be adopted till his marriage. The Nirṇayasindhu seems to be of the same opinion. The V. Mayūkha[1284]

1283. About the पुत्रेष्टि, the दत्त. मी. p. 132 says 'अग्नये पुत्रवते पुरोडाशमष्टाकपालं निर्वपेदिन्द्राय पुत्रिणे पुरोडाशमेकादशकपालं प्रजाकामः । अग्निरेवास्मै प्रजां प्रजनयति वृद्धामिन्द्रः प्रयच्छतीति वाक्ये प्रजाफलकत्वमिष्टेः श्रूयते । तच्च प्रागुत्पन्ना प्रजा तत्र तदुत्पत्तिरेव भाव्या यत्र तूत्पन्ना परिगृह्यते तत्रोत्पत्तेरेवाभावात्तस्याः प्रजात्वमेव भाव्यमिति कल्प्यते प्रकृतविध्यन्यथानुपपत्तेः ।'. The सं. कौ. p. 173 contains the words अग्नये ... प्रयच्छति. Vide आश्व. श्रौ. II. 10 'पुत्रकामेष्ट्यामाग्निः पुत्री.'

1284. दत्तकस्तु परिणीत उत्पन्नपुत्रोपि च भवतीति तातचरणाः । युक्तं चेदं बाधकाभावात्. व्य. म. p. 114. When Nilakaṇṭha says that the three verses of the Kālikāpurāṇa refer to the adoption of an asagotra boy, that is not his real opinion; he only concedes that that passage may, if at all, refer to the adoption of an asagotra boy. एवं च चूडाया इत्यतद्गुणसंविज्ञानबहुव्रीहिणा द्विजातीनामुपनयनलाभः शूद्रस्य तु विवाहादिलाभः । दत्त. च. p. 36.

and Sam. K. both hold that even a boy not of the same gotra may be taken in adoption after upanayana or after marriage and even when the person to be adopted has himself had a son. In Bengal, Benares[1285] and Bihar the courts hold that the boy must be adopted before *upanayana*. The same rule holds good in Madras[1286]; but there it is further held that if the boy to be adopted is of the same gotra as the adopter, the adoption may be made after upanayana but before marriage. In Bombay a person may be adopted at any age, even after marriage and even after he has had children and he may be even older than the adopter.[1287] In the whole of India, a śūdra may be adopted only before his marriage, but in the Bombay Presidency the adoption of a married man and of one having even a child is allowed also among śūdras[1288].

1285. Vide *Ganga Sahai v. Lekhraj* 9 All. 253 (at p. 306 the translations of the Kālikāpurāṇa verses by Sutherland and Colebrooke are quoted and at p. 318 the authenticity of those verses is held to be extremely doubtful); *Raja Mukund v. Jagannath* 2 Patna 469, 477 (where the passage of the Kālikāpurāṇa is quoted), in which it was held that a boy may be adopted till upanayana and that it does not matter if the cūḍā ceremony is performed in the family of birth and the putreṣṭi is omitted at the time of adoption; *Chandreshwar v. Bisheshwar* 5 Patna 777 at p. 844 (where the passage as to five years was held not binding); vide *Surabala Devi v. Sudhirkumar* AIR (1944) Cal. 265.

1286. *Viraragava v. Ramalinga* 9 Mad. 148 (F. B.) for the validity of the adoption of a sagotra after upanayanya and *Pichuvayyan v. Subbayyan* 13 Mad. 128 for the invalidity of a married man's adoption.

1287. Vide *Dharma v. Ramkrishna* 10 Bom. 80, 84 (where it is said that though Nīlakaṇṭha's explanation that the Kālikāpurāṇa verses refer to an asagotra causes a difficulty, yet it does not follow that he adopts that interpretation as his own) in which the adoption of a married asagotra brāhmaṇa was upheld; *Kalgavda v. Somappa* 33 Bom. 669 where the adoption of a married man having a son was upheld, but it was decided that the son born before adoption remained for purposes of inheritance in the natural family; *Balabai v. Mahadu* 48 Bom. 387 (where the adopted man was older than the adopter).

1288. *Lingayya v. Chengalammal* 48 Mad. 407 where it was held that even a śūdra cannot be adopted after his marriage, (which decision follows the D. C.).

Śaunaka required that the boy to be adopted must be *putracchāyāvaha*[1289] (one who bears resemblance to or is a reflection of the *aurasa* son). This has led to differing explanations by the commentators and contradictory decisions in the several Indian High Courts. The D. M. and D. C. (p. 21) both explain that the resemblance consists in the possibility of being procreated by the adopter himself by *niyoga* and the like. The meaning of the D. M. is: A brother's son or a sapiṇḍa's son or a sagotra's son can be adopted because the adopter could have procreated a son by the practice of niyoga on the wife of a brother or a sapiṇḍa or a sagotra (according to the rules of niyoga); but he could not have done so as regards his mother, or grandmother, daughter or sister or his mother's sister. Therefore a man cannot adopt his own brother, paternal or maternal uncle, a daughter's son or a sister's son and the like. One strange thing is that, though *niyoga* had been forbidden for many centuries before the D. M., the author of it brings in the rules of the long obsolete practice of *niyoga*[1290] to find out who could or could not be adopted. But stranger things were to happen. Sutherland who translated both the D.M. and the D.C. explained in his notes the word ' niyogādinā ' as ' by such an appointment or marriage and the like '. Vide Stoke's Hindu Law Texts p. 590 (Dattakamīmāṁsa, sec. V. *placitum* 16 note). There was no warrant for introducing the word ' marriage ' after ' niyoga '. The rules of niyoga are different from those of marriage. The judges most of whom were generally ignorant of Sanskrit and had yet to decide cases among Hindus according to Hindu Law as understood by them (vide 26 I. A. 113 at page 128 about the ignorance of Sanskrit among judges) seized upon this explanation and evolved the curious rule that no one could be adopted whose mother the adopter could not have married in her maiden state (i. e. the relationship has reference to a time *prior* to

1289. पुत्रच्छाया पुत्रसादृश्यं तच्च नियोगादिना स्वयमुत्पादनयोग्यत्वं यथा भ्रातृसपिण्डसगोत्रादिपुत्रस्य । न चासम्बन्धिनि नियोगासम्भवः । बीजार्थं ब्राह्मणः कश्चिद्धनेनोपनिमन्त्र्यतामिति स्मरणात् । ततश्च भ्रातृपितृव्यमातुलदौहित्रभागिनेयादीनां निरासः पुत्रसादृश्याभावात् । ... तथा मकृते विरुद्धसम्बन्धपुत्रो वर्जनीय इति । यतो नियोगः सम्भवति तादृशः कार्य इति यावत् । दत्त. मी. pp. 144–145 and p. 147. The words पुत्रच्छाया ... योग्यत्वं occur in दत्त. च. also (p. 21). The half verse बीजार्थं ... मन्त्र्यताम् is almost like आदिपर्व 105. 2.

1290. For the rules of *niyoga* vide H. of Dh. vol. II. pp. 599–601.

marriage). This is still the law in all Presidencies[1291] except Bombay. Although the D. M. stated that the boy to be adopted must be capable of being procreated by niyoga, at another place it remarks, after quoting verses of Śaunaka[1292] and Śākala, that a boy of another gotra may be adopted except a daughter's son, a sister's son and a mother's sister's son. The Bombay High Court holds that any one may be adopted except these three (vide *Ramchandra v. Gopal* 32 Bom. 619, *Walbai v. Heerbai* 34 Bom. 491 holding that a man cannot adopt his mother's sister's son, *Ramkrishna v. Chimnaji* 15 Bom. L. R. 824 holding the adoption of father's sister's son valid). Very strange results have followed from this viz. the Bombay High Court has upheld the validity of the adoption as a son by a man of his own half-brother (vide *Gajanan v. Kashinath* 39 Bom. 410), of his own maternal uncle's son, and the adoption by a widow of her deceased husband's son-in-law (vide *Sitabai v. Parvatibai* 47 Bom. 35). It should be noted that the Dvaitanirṇaya or Dharmadvaitanirṇaya[1293] (of Śaṅkarabhaṭṭa, father of Nīlakaṇṭha) and the V. Mayūkha both hold after a very abstruse reasoning based on several Mīmāṁsā rules, that men of the three higher classes may

1291. Vide *Minakshi v. Ramanada* 11 Mad. 49 (F. B.), *Bhagwan Singh v. Bhagwan Singh* L. R. 26 I. A. 153, 160, in the latter of which the texts of Saunaka and Sākala are relied upon.

1292. तथा च शौनकः । ... दौहित्रो भागिनेयश्च शूद्रैश्च क्रियते सुतः । ब्राह्मणादित्रये नास्ति भागिनेयः सुतः क्वचित् । ... तदेतत्स्पष्टमाचष्टे शाकलः । समानगोत्रजाभावे पालयेदन्यगोत्रजम् । दौहित्रं भागिनेयं च मातृस्वसृसुतं विना । इति । एतेन भागिनेयपदं दौहित्रमातृष्वस्रेययोरुपलक्षणमिति स्पष्टमेव सिद्धम् । युक्तं चैतत्, विरुद्धसम्बन्धस्य त्रिष्वपि समानत्वात् । दत्त. मी. pp. 80 and 101; दत्त. च. p 8; दत्त. प्र. p. 6 quotes शाकल's verse. The दत्त. मी. elsewhere (p. 98) and the सं. कौ. p. 158 read शूद्राणां विहितः सुतः and the सं. कौ. p 176 reads 'दौहित्रं भागिनेयं वा शूद्राणां चापि दापयेत्,' while the धर्मद्वैतनिर्णय (p. 105) and the व्य. मयूख p. 110 read दौहित्रो भागिनेयश्च शूद्रस्यापि च दीयते. वृद्धगौतम q. by the दत्त. मी. p. 146 reads 'ब्राह्मणादित्रये नास्ति भागिनेयः सुतः क्वचित् ।'

1293. Vide the text of the V. Mayūkha p. 111 and notes pp. 173-179 in my edition of the V. Mayūkha for explanation. The Dvaitanirṇaya (p. 105) concludes: 'तेन ब्राह्मणादिभिरपि दौहित्रभागिनेयौ पुत्रत्वेन ग्राह्याविति सिद्धम् । तथा शूद्रेण सति सम्भवे दौहित्रभागिनेयावेव ग्राह्यौ.' The V. Mayūkha p. 111 follows the Dvaitanirṇaya and states that usage is in accordance with its explanation: 'विवृतं चैतद् द्वैतनिर्णये तातचरणैः शिष्टाचारोऽप्येवम् ।'. In *Gopal v. Hanmant* 3 Bom. 273 at p. 280 it was held that Nilakaṇṭha also interdicted the adoption of the daughter's son and of the other two by the regenerate classes. It is submitted that this view as to the position of the V. Mayūkha on this point is entirely wrong.

adopt a daughter's son, a sisters's son or a mother's sister's son and that a śūdra must adopt one of these if available in preference to any one else. The Bombay High Court follows the interpretation of Śaunaka's verse given by Nandapaṇḍita in preference to Nīlakaṇṭha's, but in its turn disregards the authority of Nandapaṇḍita who forbade the adoption of a brother or uncle. It would have been far better if it had generally brushed aside everywhere the dicta of Nandapaṇḍita and preferred the interpretation of the Mayūkha. Popular sentiment is in favour of the daughter's son or sister's son being adopted, as they are the nearest and often the dearest relations, and yet the High Court shuts the door against them, while it opens it ajar for the adoption of a brother or maternal uncle or his son or one's own daughter's husband, which appears absurd to people. Besides the High Courts have recognised the adoption even of a daughter's son[1294] on the ground of custom by Deśastha smārta brāhmaṇas in the Dharwar District (vide *Sundrabai v. Hanmant* 56 Bom. 298), by Telugu brāhmaṇas (*Viswasundara v. Somasundara* 43 Mad. 876). Śūdras can adopt a daughter's or sister's or mother's sister's son all over India. The D. M. went so far as to say that a widow could not adopt *her* brother's son.[1295] The D. M. ignored the fact that the widow adopts to her husband (and not to herself) who bore no relation to his wife's brother's wife and who could have himself adopted that son. The Bombay High Court and the Privy Council have discarded this absurd proposition of the D. M. Pannalal in 'Kumaun Local customs'

1294. It may be noted that the question of the adoption of the daughter's son cropped up even in the times of the Peshwas. In 'Selections from Peshwa's Records' vol. 43 No. 146 pp. 116–117 the opinion of Rāmśāstri, the Chief Justice of the Peshwa's court, is sought on the adoption of a daughter's son from the Ratnagiri District. The Pṛthvīrāja Rāsau states that the famous Chohan hero Pṛthvīrāja had been adopted by his maternal grand-father Anaṅgapāla of the Tomara dynasty of Delhi. But modern historians say that this is imaginary (vide 'History of Medieval India' by Prof. Ishwari Prasad p. 9 *n.*).

1295. यदाह वृद्धगौतमः । ब्राह्मणादित्रये नास्ति भागिनेयः सुतः क्वचित् । इति । भागिनेयपदं भ्रातृपुत्रस्याप्युपलक्षणम् । तेन भगिन्या भ्रातृपुत्रो न ग्राह्यः । दत्त. मी. pp. 56–57. Vide *Bai Nani v. Chunilal* 22 Bom. 973, *Puttulal v. Parbati* 42 I. A. p. 155, where after admitting that the Dattakamīmāṁsā is embedded in law, the P. C. say that caution is required in accepting the glosses of Nanda Paṇḍita where they deviate from or add to the smṛtis (p. 161).

notes that in that part of India a daughter's or a sister's son may be adopted (p. 14 para 56). It has been recently held that the adoption of the illegitimate son of a woman even among śūdras is invalid. Vide *Apya v. Ramakka* I. L. R. (1941) Bom. 350. This was relied upon for holding that a woman cannot give in adoption an illegitimate son among Lingayats in *Tirkangauda v. Shivappa* A. I. R. (1944) Bom. 40.

It is now necessary to say a few words about the *dvyāmuṣyāyaṇa*. A *dattaka* is of two kinds[1296], *kevala* (simple or ordinary) and *dvyāmuṣyāyaṇa* (the son of two fathers). When a man gives *his only* son in adoption to another under an agreement that he is to be considered as the son of both the natural father (*janaka* or *janaka-pitṛ*) and of the adoptive father (*pālaka*), the son so given is called *dvyāmuṣyāyaṇa*. The Bombay High Court has held that in order to constitute a *dvyāmuṣyāyaṇa* an express agreement as stated above must be proved even when one brother adopts the only son of another[1297]. A dvyāmuṣyāyaṇa inherits both in the natural and adoptive families. The word dvyāmuṣyāyaṇa was employed in some of

1296. अयं च दत्तको द्विविधः केवलो द्व्यामुष्यायणश्च । संविदं विना दत्त आद्यः । आवयोरसाविति संविदा दत्तस्त्वन्त्यः । व्य. मयूख p. 114. The दत्त. च. (pp. 61,66) employs the word शुद्धदत्तक for केवलदत्तक. Vide *Laxmipatirao v. Venkatesh* 41 Bom. 315, *Huchrao v. Bhimarao* 42 Bom. 277. It has already been seen (p. 659) that the Mit. employs the words dvyāmuṣyāyaṇa and kṣetraja as synonyms. Nār. (dāyabhāga 23) appears to use it in the same sense, 'द्विरामुष्यायणा दद्युर्द्वाभ्यां पिण्डोदके पृथक् । रिक्थादर्धं समादद्युर्बीजिक्षेत्रिकयोस्तथा ॥'. In this verse Nār. does not employ the form dvyāmuṣyāyaṇa, but the word āmuṣyāyaṇa with the adverb 'dviḥ' meaning 'twice'. The word dvyāmuṣyāyaṇa is made up of 'dvi' (two) and 'āmuṣyāyaṇa' (issue of this man, issue of so and so). The word āmuṣyāyaṇa occurs in the Tai. Br. II. 7. 7. 7 (अपां य ऊर्मौ रसस्तमहमस्मा आमुष्यायणाय ओजसा वीर्याय गृह्णामि) and in the Atharvaveda IV. 16. 9, X. 5. 36 and 44, XVI. 7. 8 in the form 'āmuṣyāyaṇa amuṣyāḥ putra'. In the Hir. gṛ. I. 9. 19 we have इदमहमामुष्यायणस्य पाप्मानमवगूहामि, where Mātṛdatta explains: अमुष्यापत्यं आमुष्यायण इति. Similar words occur in the Bhāradvāja gṛ. II. 19. Kātyāyana has vārtika 2 'आमुष्यायणामुष्यपुत्रिकेत्युपसंख्यानम्' on Pāṇ. VI. 3. 21. 'Āmuṣyāyaṇa' is formed from 'amuṣya' (of this or that man) in the sense of 'apatya' acc. to Pāṇini IV. 1. 99 (*naḍādibhyaḥ phak*). In the Āśv. Śr. S. (Uttaraṣaṭka 6. 13) the word 'dvipravācana' is employed for dvyāmuṣyāyaṇa, 'अथ य एते द्विप्रवाचना यथैतच्छौङ्गशैशिरयः' on which Nārāyaṇa explains, य एते द्विप्रवाचना द्विवंश्यव्यपदेश्याः यथैते शौङ्गशैशिरा द्व्यामुष्यायणाः शौङ्गस्य क्षेत्रे शैशिरेर्बीजोत्पन्नानां वंशाः.

1297. Vide *Laxmipatirao v. Venkatesh* 41 Bom. 315 and *Huchrao v. Bhimarao* 42 Bom. 277.

the smṛtis as applicable to all such sons as the dattaka, krita[1298]. The V. Mayūkha quotes a prose passage from Kātyāyana (which is attributed to Paiṭhīnasi in D. C.) and the V. Mayūkha, D. M. and D. C. all quote a verse (which is ascribed to Pravarādhyāya by the first and to Pārijāta by the D. M.) that supports this. The D. M. and D. C. both quote two sūtras of Satyāṣāḍha and Śabara's gloss (*bhāṣya*) thereon in which the *kṣetraja* is called *nitya dvyāmuṣyāyaṇa* and the dattaka and others are called *anitya* dvyāmuṣyāyaṇa. Yāj. II. 127 and Baud. Dh. S. II. 2. 21 provide that a kṣetraja is the son of both the begetter and of the husband of the wife on whom the son is procreated. Therefore such a son is called *nitya* dvyāmuṣyāyaṇa (because he is always the son of two fathers). When the kṣetraja became obsolete and forbidden, the only dvyāmuṣyāyaṇa was an only son taken in adoption with a stipulation as described above. About the dattaka Manu IX. 142 states the general rule that the dattaka loses the gotra of his genetive father and assumes that of the adopter. But a dattaka belonged to two gotras according to some, if his saṁskāras up to *caula* were performed in his natural family and the saṁskāra of upanayana and those that follow were performed in the adoptive family. Therefore it was not a general proposition that a dattaka always belonged to two gotras. If all the saṁskāras from *jātakarma* were performed by the adopter, then the dattaka would take the gotra of the adopter alone. Hence the sons called dattaka and 'the bought' were styled *anitya* dvyāmuṣyāyaṇas (who were not in all cases dvyāmuṣyāyaṇas). The D. M. states this[1299] twofold division of dvyāmuṣyāyaṇas and employs the words *nityavat* or *nitya* and *anityavat* or *anitya*

1298. यत्तु–अथ स्वेदृत्तकक्रीतपुत्रिकापुत्राः परपरिग्रहेणानार्षेयास्ते द्व्यामुष्यायणा भवन्ति—इति द्व्यामुष्यायणानुपक्रम्य कात्यायनः । व्य. मयूख p. 115 ; दत्त. च. p. 46 ascribes this to पैठीनसि and reads ; अथ दत्तकक्रीतकृत्रिमपुत्रि ... ... ग्रहेणार्षेण येऽत्र जातास्तेऽसकृतकुलीना द्व्यामुष्यायणा भवन्तीति ।; द्व्यामुष्यायणका ये स्युर्दत्तकक्रीतकादयः । गोत्रद्वयेऽप्यनुद्वाहः शौङ्गशैशिरयोर्यथा । q. from प्रवराध्याय by व्य. मयूख p. 118.

1299. द्विविधा दत्तकादयो नित्यवद् द्व्यामुष्यायणा अनित्यवद् द्व्यामुष्यायणाश्च । तत्र नित्यवद् द्व्यामुष्यायणा नाम ये जनकप्रतिग्रहीतृभ्यामावयोरयं पुत्र इति संप्रतिपन्नाः । अनित्यद्व्यामुष्यायणास्तु ये चूडान्तैः संस्कारैर्जनकेन संस्कृता उपनयनादिभिश्च प्रतिग्रहीत्रा । तेषां गोत्रद्वयेनापि संस्कृतत्वाद् द्व्यामुष्यायणत्वं परं त्वनित्यम् । जातमात्रस्यैव परिग्रहे गोत्रद्वयेन संस्काराभावात् तस्य प्रतिग्रहीतृगोत्रमेव । तदिदं सर्वमभिप्रेत्याह सत्याषाढः । 'नित्यानां द्व्यामुष्यायणानां द्वयोः' इति सूत्रेण नित्यद्व्यामुष्यायणानां गोत्रद्वये प्रवरसम्बन्धमुक्त्वा तमेवानित्येष्वप्यतिदिशति 'दत्तकादीनां तु द्व्यामुष्यायणवत्' इति सूत्रेण । दत्त. मी. pp. 188-89; vide दत्त. च. p. 44 for the सूत्र of सत्याषाढ.

to denote the two varieties and restricts the former only to a son adopted with a stipulation as stated above. The kṣetraja became quite obsolete many centuries ago and the courts have held that the anitya dvyāmuṣyāyaṇa is also now obsolete.[1300] It is now held that every adoption is presumed to be in the simple (*kevala*) form, unless a stipulation that the boy will be the son of both is proved (when it will be a dvyāmuṣyāyaṇa adoption).

When a man is adopted in the dvyāmuṣyāyaṇa form, his son born after such adoption has been held to inherit as grandson to the adoptive father, if the dvyāmuṣyāyaṇa son died before the adoptive father.[1300a]

Ceremonies of Adoption.—The most essential ingredient in adoption is the giving of the boy by the natural father and the taking of the boy by the adopter with the intention to transfer the boy to the family of the adopter. Another requisite (in some cases) is the homa called *dattahoma*[1301] which as described by Śaunaka and Baud. is given[1302] in the Appendix. It is not necessary that the *dattahoma* must be performed immediately after the giving and taking, but it may be performed later and its performance may be delegated to others when the giver or taker is a widow or a śūdra or is ill &c. Although in Vedic times women composed hymns and although Hārīta and Yama stated that women had the upanayana performed on them and could study the Veda (H. Dh. vol. II pp. 293-295), in later times it was held that women could not study the Veda, could not repeat Vedic mantras and therefore could not perform any homa (including *dattahoma*). Therefore some writers said that a widow could not adopt at all, while others like the V. Mayūkha said that women are to be assimilated to śūdras and so just as a śūdra can get the dattahoma performed through a brāhmaṇa, so a widow, though she cannot herself engage in homa, may employ a brāhmaṇa to perform the dattahoma. Vide H. Dh. vol. II. pp. 365-368 (for deterioration in the

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1300. Vide *Basappa v. Gurlingawa* 57 Bom. 74, 77, where the two kinds of dvyāmuṣyāyaṇas are mentioned and it is stated that the anitya dvyāmuṣyāyaṇa is now obsolete.

1300 *a*. Vide *Ganpatrao v. Balkrishna* I. L. R. (1942) Bom. 340.

1301. तस्माद् दत्तकादिषु संस्कारनिमित्तमेव पुत्रत्वमिति सिद्धम् । दानप्रतिग्रहहोमाद्यन्यतमाभावे तु पुत्रत्वाभाव एवेति । दत्त. मी. p. 161.

1302. Vide Appendix.

position of women), and note 1262 above and V. Mayūkha quoted below. [1303] It has been held that the *dattahoma* is not[1304] necessary among twice-born classes if the boy to be adopted belongs to the same gotra as that of the adoptive father. Jolly (in T. L. L. p. 160) states that the Dattakadarpaṇa refers to a text of Yama from the Sarasvatīvilāsa to the effect that *homa* is not absolutely essential in all cases. From Colebrooke's Digest V. 4 CCLXXIII it appears that Jagannātha held the same view. The Dharmasindhu remarks that in certain countries an adoption of a sagotra sapiṇḍa boy can be validly effected with the mere assent of the giver and adopter without Vedic ceremonies. There is a good deal of conflict in the case law on this point, which is passed over. Among śūdras no *homa* is necessary. The ceremony of adoption as described by Baud. gṛ. śeṣasūtra II. 6. 4–9 (which is probably the oldest on record and which was the one to be followed by the Taittirīyas or followers of the Black Yajurveda, according to D. M., Saṁ. K. p. 177 and the Dharmasindhu p. 161) is as follows: When about to take (in adoption) the adopter makes ready (or collects) the following viz. two pieces of cloth, two ear-rings, a finger ring, an ācārya (officiating priest) who is well versed in the Veda, a bundle of kuśa grass, fuel sticks of palāśa (Butea Frondosa). Then in the midst of invited relatives, after informing the ruler, he serves food to brāhmaṇas in the assembly hall or in the middle of the house. He (the adopter) makes (the brāhmaṇas) pronounce the benedictions 'May the day be auspicious! May you fare well! May there be prosperity!' and performs the acts (usual in all homas) from drawing lines on the altar up to carrying forward the Praṇītā water. Vide H. of Dh. vol. II pp. 209–212 for the procedure common to all homas. Then he goes into the

1303. यच्छुद्धिविवेक उक्तं वैदिकमन्त्रसाध्यहोमवति पुत्रप्रतिग्रहे शूद्रस्यानधिकार इति तदुपास्यम्। समन्त्रकहोमस्तु तेन विप्रद्वारा कार्यः। ... स्त्रिया अपि शूद्रवदेवाधिकारः। स्त्रीशूद्राश्च सधर्माणः—इति वाक्यात्। व्य. मयूख p. 112 (text). Vide H. Dh. vol. II. pp. 594–595 notes 1392–1395 for other texts treating women (of higher castes) and śūdras alike.

1304. Vide *Valubai v. Govind* 24 Bom. 218, *Bal Gangadhar v. Shrinivas* 39 Bom. 441 (P. C.), *Govindayyar v. Dorasami* 11 Mad. 5 (F.B.); *Muthuvayyangar v. Thiruvangadammal* I.L.R. (1942) Mad. p. 682. स्त्रियाश्च होमासम्भवस्तथापि व्रतादिवद्विप्रद्वारा होमादि कारयेदिति हरिनाथादयः। सम्बन्धतत्त्वेऽप्येवम्। एवं शूद्रस्यापि स्त्रीशूद्राश्च सधर्माण इति स्मृतेः। अत एव शूद्रकर्तृकहोमो विप्रद्वारैव पराकेणोक्तः। निर्णयसिन्धु III पूर्वार्ध p. 249; क्वचिद्देशे वैदिकविधिं विनापि दातृग्रहीतृसंमतिराजपुरुषाद्यनुमत्यादिलौकिकव्यापारमात्रेणोपनयनादिसंस्कारकरणमात्रेण च सगोत्रसपिण्डे पुत्रत्वसिद्धिव्यवहारो दृश्यते तत्र मूलं नोपलभ्यते। धर्मसिन्धु III पूर्वार्ध p. 158.

presence of the giver and begs of him 'give me your son'. The other one (the giver) says 'I give'. He (adopter) then takes hold of the boy with the words 'I accept thee for the continuity (of my family)'. Then he decks (the boy) with the pieces of cloth, the ear-rings, the finger ring and performs the acts from laying fuel sticks round the altar up to the offering of oblations into fire; he offers boiled rice into fire with the mantra 'yastvā hṛdā' (Ṛg. V. 4. 10 or Tai. S. I. 4. 46. 1) as a *puronuvākyā*[1305] (prayer of invitation) and with the mantra 'yasmai tvaṁ sukṛte' (Ṛg. V. 4. 11, Tai. S. I. 4. 46. 1) as a *yājyā* (prayer of worship or offering). Then having offered oblations of clarified butter with the vyāhṛtis[1306] he performs the acts from the offering to Agni Sviṣṭakṛt down to the giving of the cow and presents. He (the adopter) gives as dakṣiṇā (fee) to the priest these very pieces of cloth and rings (with which the boy was decked).

The procedure laid down by Śaunaka, who appears to be much later than Baud., is somewhat different (though there is a good deal common to both) and is meant for the students of the Ṛgveda (acc. to Saṁ. K. p. 175). A few salient points may be noted. The adopter should fast the previous day, he should offer *madhuparka* to the officiating priest, should perform all the details from the placing of fuel sticks on the fire up to the purification of clarified butter with the blades of kuśa grass. The giver recites (when begged) the five verses beginning with 'ye yajñena' (Ṛg. X. 62. 1–5) and the adopter holds the boy with both hands while repeating the mantra 'devasya tvā' (Āśv. gṛ. I. 20. 4), mutters the ṛk 'aṅgād-aṅgād' (quoted above on p. 641 n. 1202) and smells the boy on his head. The adopter offers boiled rice with Ṛg. V. 4. 10, X. 85. 38, X. 85. 41–46. A much more elaborate procedure is set out in the V. Mayūkha (pp. 120–122 text) and the Dharmasindhu (III pūrvārdha pp. 160–161).

The results of adoption—Adoption has the effect of transferring the adopted person from his natural family into the adoptive family. Adoption confers upon the adopted person the same rights and privileges in the family of adoption as the son

1305. For the meaning of Puronuvākyā and Yājyā, vide H. of Dh. vol. II. p. 1060 n. 2372 and pp. 1058–59 respectively. For the offering to Agni Sviṣṭakṛt vide H. of Dh. vol. II. p. 208 and appendix p. 1257 n. 481.

1306. The vyāhṛtis are the mystic syllables *bhūḥ*, *bhuvaḥ* and *svaḥ*. The offerings will be accompanied with these syllables as follows; 'om bhūḥ svāhā', 'om bhuvaḥ svāhā', 'om svaḥ svāhā', 'om bhūr bhuvaḥ svaḥ svāhā'.

of the body (*aurasa*) except in a few well defined cases. The basic text on this point is that of Manu[1307] IX. 142 which may be literally rendered as follows : 'The son given should not take the *gotra* (the family name) and the wealth of his natural father; the piṇḍa (the cake of boiled rice offered to deceased ancestors in śrāddhas) follows the *gotra* and the wealth (i. e. is invariably concomitant with them); of him who gives (his son in adoption) the *svadhā* (obsequial rites) ceases (so far as that son is concerned)'. The preceding verse (Manu IX. 141) states that the adopted son takes the wealth of his adoptive father and all that this verse says is that, after adoption, the son given in adoption does not take the name of his natural father and has no right in the wealth that then is the natural father's and that he does not perform the obsequial and śrāddha rites for his natural father. But from this verse a learned Hindu Judge derived the sweeping proposition that 'the theory of adoption depends upon the principle of a complete severance of the child adopted from the family in which he is born, both in respect to the paternal and maternal line, and his complete substitution into the adopter's family as if he were born in it'. There is no warrant for the idea of complete severance emphasized here. This dictum was followed in many cases and was accepted by the Privy Council[1308]. Another great Judge went so far as to

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1307. गोत्ररिक्थे जनयितुर्न हरेद् दत्त्रिमः क्वचित् । गोत्ररिक्थानुगः पिण्डो व्यपैति ददतः स्वधा ॥ मनु IX. 142. The Mit. on Yāj. II. 132 and V. Mayūkha p. 115 read 'न भजेद् दत्त्रिमः सुतः'. But this reading makes no change whatever in the meaning, since in ancient sūtras and smṛtis, the roots '*bhaj*' and '*hṛ*' and derivatives from them are used promiscuously in the same sense with regard to gotra and riktha. Vide the words gotra-bhājaḥ and riktha-bhājaḥ cited above (on p. 650) from Baud. Dh. S. II. 2. 36–37 and Gaut. 28. 30–31, the words 'rikthaṁ bhajeran' (in Gaut. 28. 19) and 'rikthabhāk' (in Gaut. 28. 26), Vas. 17. 84 (tayoralābhe rājā haret), Yāj. II. 132 (पिण्डदोंऽशहरश्चैषां) and II. 138 (वृथाद्वपहरेच्चांशं), विष्णुधर्मसूत्र 15. 40 (यश्चार्थहरः स पिण्डदायी). Even 'apaharet' which ordinarily means 'should steal or take away' is used by Yāj. II. 138 only in the sense of 'should take or claim'. Manu (IX. 153 and 154) employs the words 'haret' and 'ādadyāt' in the same sense. Vide also रिक्थभाक् (in Manu IX. 155) and भजेरन् (in IX. 192). Therefore the learned Judges in *Dattatraya v. Govind* 40 Bom. 429 and in *Bai Kesarba v. Shivsangji* 34 Bom. L. R. 1332 (at pp. 1340–41) unnecessarily enter into a long discussion on 'haret' and 'bhajet' and the several translations of these words by Golapchandra Sarkar and others.

1308. Vide *Uma Shunker Moitro v. Kali Komul* 6 Cal. 256 (F. B.) at p. 260. Vide *Kali Komul v. Uma Shunkur* L. R. 10 I. A. 138, 149 for the acceptance by the P. C.

say that 'an absolute adoption appears to operate as birth of the boy in the family of adoption and as civil death in the family of birth, having regard to the legal consequences that are incidents of such adoption'[1309]. But then the P. C. felt that matters were being carried too far and administered the warning[1310] that "As has been more than once observed the expressions 'civilly dead or as if he had never been born in the family' are not for all purposes correct or logically applicable but they are complimentary to the term 'new birth'." We have to see what construction was put upon the verse of Manu by authoritative digests. The V. Mayūkha explains Manu IX. 142 and arrives at the conclusion that the four words *gotra*, *riktha*, *piṇḍa* and *svadhā* are not to be taken literally but they are only used to indicate all those consequences only in relation to the natural father and the like that are brought about by their connection with the piṇḍa and the verse of Manu conveys the cessation of all those consequences only. It further adds that the son on being given away in adoption ceases to have similar relationship to his brother, paternal uncle (in the family of birth). It should be noted that the V. Mayūkha does *not* say that the son given away is dead to the family of birth or ceases to have any connection whatever with the members of the family of birth, but restricts the cessation of relation to the offering of piṇḍa and the taking of the estate after he is adopted. The D. M. quotes[1311] the Sm. C. (II. 289) and holds that by the gift the adopted son ceases to have the same gotra as the giver. The D. C. (pp. 23–24) states[1312] the same proposition, without naming the Sm. C. The learned Judges who had to decide cases of adoption, even if they knew Sanskrit, do not generally appear to have consulted authoritative works other than the few that had been translated and were quite unaware as

1309. Per Sir Asutosh Mukerji J. in *Birbhadra v. Kalpataru* 1 C. L. J. 388 at p. 400 (where Manu IX. 142 is cited in the original for this).

1310. Vide *Raghuraj Chandra v. Subhadra* L. R. 55 I. A. 139, 148 followed in *Martand v. Narayan* I. L. R. 1939 Bom. 586 (F. B.).

1311. एतेन पुत्रत्वापादकक्रिययैव कृत्रिमस्य प्रतिग्रहीतृधने स्वत्वं तत्सगोत्रत्वं च भवति । दातृधने तु दानादेव पुत्रत्वनिवृत्तिद्वारा कृत्रिमस्य स्वत्वनिवृत्तिर्दातृगोत्रनिवृत्तिश्च भवतीत्युच्यते इति चन्द्रिकाकारः । दत्त. मी. pp. 163–164. The words पुत्रत्वापाद ... निवृत्तिश्च भवति occur in the स्मृतिच. II. p. 289.

1312. तथा मनुः । गोत्ररिक्थे ... स्वधा । इति । एतेन दातृधने दानादेव पुत्रत्वनिवृत्तिद्वारा कृत्रिमस्य स्वत्वनिवृत्तिर्दातृगोत्रनिवृत्तिश्च भवतीत्युच्यते । तथा च गोत्रादिनिवृत्तेरेव दर्शनात् संस्कुर्वीत्स्वसुतान् पितेति स्मरणात् ग्रहणानन्तरसंभाव्यमाना एव दत्तकस्य संस्काराः प्रतिग्रहीत्रा कार्या न पुनर्जनकेन कृतपूर्वा अपि निवर्तनीयाः । दत्त. च. pp. 23–24.

to whether even the cessation of the piṇḍa and gotra and of the right to wealth when a son was given away was so universally accepted by the leading Dharmaśāstra works as they thought. The Sarasvatīvilāsa (p. 394) quotes a text of Viṣṇu[1313] that even the adopted son should perform the obsequial rites of the natural father and explains that Manu IX. 142 applies when the natural father has no issue at the time of his death. Rudraskanda on Khādira gṛ. III. 5. 16 says the same. Kamalākara, the author of the Nirṇayasindhu[1314] and a first cousin and contemporary of Nīlakaṇṭha expressly states that Manu IX. 142 only applies when the natural father has a son or sons (other than the one given away) and quotes Kātyāyana and Laugākṣi cited in the Pravaramañjarī (p. 146) in support. The Dharmasindhu[1315] also says that when a boy of another gotra is adopted after his upanayana is performed in the family of birth or when only the upanayana is performed by the adoptive father, the adopted boy should repeat both gotras at the time of bowing at the feet of elders or in śrāddha and other rites; but when all the ceremonies including the cūḍā are performed by the adoptive father then the adopted boy has only one gotra (viz. that of the adopter).

The plain meaning of the verse of Manu (IX. 142) is that when a man gives away his son in adoption, then that son is transferred into another family, does not perform the śrāddha and similar rites for the giver and cannot claim to take the wealth of his natural father as a son on the father's death or demand a partition from his father. The other son or sons

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1313. नन्वेवं—गोत्ररिक्थे ... ... स्वधा—इति मनुवचनाद् दत्रिमस्य स्वजनकगोत्रसापिण्ड्ययोर्निवृत्तौ कथं दत्रिमोपि स्वजनयितुः स्वधां कुर्यादिति विष्णुवचनमिति चेदुच्यते । तत्तु दत्रिमजनकस्य सन्तत्यभावे वेदितव्यम् । स. वि. p. 394 ; तथा दत्तपुत्रोपि जनयितुः पुत्रान्तराभावे । एवमन्योपि यो द्वयोः पुत्रः । रुद्रस्कन्द on खादिरगृह्य III. 5. 16.

1314. दत्तकस्तु जनकस्य पुत्राद्यभावे दद्यात् तत्सत्त्वे गोत्ररिक्थे...स्वधेति मनूक्तेः । इदं जनकस्य पुत्रसत्त्वविषयम् । एतच्च प्रवरमञ्जर्यां कात्यायनलौगाक्षिभ्यां स्पष्टमुक्तम् । 'अथ ये दत्तक्रीत ... द्व्यामुष्यायणा भवन्ति ... भवन्तीत्यादिना द्वयोः पित्रोः प्रवरानुक्त्वोक्तं 'अथ यद्येषां स्यात्तु भार्यास्वपत्यं न स्याद्रिक्थं हरेयुः पिण्डं चैभ्यस्त्रिपुरुषं दद्युर्यद्युभयोर्न स्यादुभाभ्यामेव दद्युरेकस्मिन्श्राद्धे पृथगुद्दिश्य द्वावनुकीर्तयेत्परिगृहीतारं चोत्पादयितारं चा तृतीयात्पुरुषादिति । नि. सि. III उत्तरार्ध p. 389. The passage quoted occurs on p. 146 of the प्रवरमञ्जरी. This passage is quoted in the व्य. म. p. 115 also. Vide note 1298 above for a portion of it. The चि.ता. folio 127 says 'गोत्ररिक्थे... स्वधा ॥ इदं जनकस्य पुत्रसत्त्वे तदभावे जनकस्यापि रिक्थहरः श्राद्धदश्च । तदुक्तं कात्यायनलौगाक्षिसूत्रे । अथ ये ... भवन्ति.'

1315. परगोत्रोत्पन्नदत्तकस्योपनयनमात्रे पालकगोत्रेण कृते उपनयनोत्तरं प्रतिग्रहे वा दत्तकेनाभिवादनश्राद्धादिकर्मसु गोत्रद्वयोच्चारः कार्यः । चूडादिसंस्कारे पालकेन कृते पालकैकगोत्र एव । धर्मसिन्धु III पूर्वार्ध p. 161.

of the giver are to perform the śrāddhas for the father and to succeed to the family wealth. But this verse has been twisted by some High Court decisions to yield another rule. Suppose A, a Hindu, has an only son B. On A's death B takes the whole ancestral property as the only surviving co-parcener and then B is given in adoption by his mother to X. Suppose B has a daughter C born to him before his adoption to X. Does B forfeit the estate taken by him as the last surviving male with the result that on B's adoption to X his daughter C takes the estate (which had already vested absolutely in B) as if he was dead in the family of A. The Bombay High Court has held in two decisions that on B's[1316] adoption to X in the above illustration he loses or forfeits the property he took as the last surviving co-parcener in the family of A and his daughter C would take the estate of B as if he were then dead (though he is actually living). The result of these decisions is that the verse of Manu is construed as laying down that though a man may have been absolutely entitled to certain property as a member of one family, on his adoption into another family he loses that estate which then passes on to his heir as if he had died on the day of adoption. This construction of the verse of Manu has not been accepted by the Madras and Calcutta High Courts,[1317] which hold that an adoption does not divest any property which has vested in a man previous to his adoption into another family. It may be noted that the Bombay High Court itself gave a decision[1318] which is inconsistent in principle with the two decisions

1316. Vide *Dattatraya v. Govind* 40 Bom. 429 (where Manu IX. 142 is relied on for this proposition at pp. 433-434) and *Manikbai v. Gokuldas* 49 Bom. 520.

1317. Vide *Venkata Narasimha v. Rangayya* 29 Mad. 437; *Behari Lal v. Kailas Chunder* 1 C. W. N. 121; *Shyama Charan v. Sricharan* 56 Cal. 1135.

1318. Vide *Mahableshwar v. Subramanya* 47 Bom. 542. In *Manikbai v. Gokuldas* 49 Bom. 520 (at p. 525) both the cases viz. 40 Bom. 429 and 47 Bom. 542 are apparently quoted with approval, but it is extremely difficult to reconcile the last two cases. If on adoption a separated coparcener is not divested of the estate already taken by him at a partition because the share taken by him cannot be said to be the estate of his natural father within the meaning of Manu IX. 142, the estate taken by a sole surviving co-parcener also cannot be divested by his subsequent adoption, because at the adoption it had ceased to be the estate of his natural father long before the adoption, because when a co-parcener dies his rights lapse to the other co-parceners and because the root cause of being entitled to partition and taking as surviving coparcener is the same viz. the birth-right of a son under the Mitākṣarā.

cited above, when it held that where a father and his four sons partitioned ancestral family property and one of the sons was subsequently given in adoption into another family, the son so adopted was not divested by the subsequent adoption of the property already taken by the son on partition. In a still later case the Bombay High Court approves of its first decision in 40 Bom. 429 and observes : [1319] ' the verse of Manu refers not only to the *riktha* of the natural father but also to the gotra of the natural father. It is quite clear that the gotra of the natural father is vested in the son by his birth. The gotra so vested in the son ceases after the son is given in adoption. It is difficult to understand why the riktha which is spoken of in the same manner as gotra in the verse should not cease by the entire cessation of connection with the natural family. The gotra and riktha are inextricably joined together in a dvandva compound and it would follow logically as well as grammatically that the adopted son must lose both together and cannot lose the former and keep the latter. ' In this passage the premiss that there is entire cessation of connection with the natural family is entirely wrong as has already been shown and will be shown a little later on. The adoptee's connection with the gotra of the natural family does not cease for all purposes at all. Therefore the reasoning of the passage quoted above is entirely misconceived and is further opposed to two well known rules of the Mīmāṁsā evolved for the construction of texts. On the interpretation given to Manu IX. 142 by the Bombay decisions that verse lays down two rules (*vidhis*), viz. (1) a person adopted into another family will not take the wealth of his natural father or any one in that family *after* adoption ; (2) that a person adopted into another family loses or forfeits on adoption wealth that he may have already taken absolutely in the natural family as a member of that family *before* adoption. These are two entirely different propositions and the rule of mīmāṁsā is that one and the same sentence [1320] should not be construed as laying down two rules (*vidhis*) applicable to different sets of circumstances. To so construe a text is to be guilty

1319. Vide *Bai Kesarba v. Shivsangji* 34 Bom. L. R. 1332 which accepts ' na haret ' as meaning ' shall not take ', and quotes on pp. 1341–42 the D. M., D. C. and V. Mayūkha on this verse. The P. C. decision in *Raghu Raj Chandra v. Subhadra* L. R. 55 I. A. 139 does not approve of 40 Bom. 429 as regards the exact point of decision viz. the forfeiture of property already vested before adoption.

1320. अनेकविधित्वे हि वाक्यभेद उक्तः । तन्त्रवार्तिक p. 881 on जै. II. 2. 26.

of the fault of *vākyabheda* (splitting up of a sentence so as to yield two distinct rules). The V. Mayūkha construed Manu IX 142 so as to indicate only one sense and avoid the fault of *vākyabheda* on the analogy of two examples discussed in the Pūrvamīmāṁsā[1321] works, but if the reasoning of the Bombay High Court were followed the same fault to avoid which Nīlakaṇṭha strives hard would be committed. There is another mīmāṁsā rule[1322] which will be violated by the Bombay High Court's interpretation of Manu IX. 142 viz. when an already existing thing or entity and something to be accomplished or brought about in future are spoken of together in a sentence the thing already existing or accomplished is mentioned simply for the sake of the thing to be accomplished. The accomplished fact is adoption itself. Manu who mentions adoption or the adopted son which is an accomplished entity also mentions along with it the taking of property (rikthaharaṇa); hence that taking must have reference to the future bringing about and not the undoing of rikthaharaṇa which had already taken place long before.

That the gotra of the natural family persists in some matters even after a person is adopted is made clear by the digests. The Saṁ.[1323] K. (p. 182) says that every dattaka must, when entering on marriage, avoid the gotra of his natural as also of his adoptive father. The Dharmasindhu (III. p. 161) says the same and states that the prohibition against marriage

1321. यथा जातपुत्रः कृष्णकेशोऽग्नीनादधीत—इत्यत्र वयोवस्थाविशेषः, यथा वा—अर्धमन्तर्वेदि मिनोत्यर्धं बहिर्वेदि—इत्यनेन देशविशेषो लक्ष्यते तथात्र गोत्ररिक्थपिण्डस्वधापदैर्जनकादीनां पिण्डसम्बन्धमयुक्तं कार्यमात्रं लक्षयित्वा तन्निवृत्तिरुच्यते। तेन सोदरपितृव्यादिसम्बन्धनिवृत्तिरपि सिद्धा भवति। व्य. मयूख p. 115. Vide my notes to V. M. pp. 189-191 for explanations. Jai. (III. 7, 13-14) deals with the 2nd example. The bhāṣya of Śabara and the Tantravārtika explain how there will be vākyabheda if the sentence (ardham &c.) is literally construed.

1322. भूतभव्यसमुच्चारणे भूतं भव्यायोपदिश्यते। शबर on जै. III. 4. 40, p. 976; द्रव्यदेवतं हि भूतं भावयितव्यो यजत्यर्थः। भूतभव्यसमुच्चारणे च भूतं भव्यायोपदिश्यते। शबर on जै. IX. 1. 9 p. 1652; भूतं भव्यायोपदिश्यत इति भूतं द्रव्यं भव्यां क्रियां निर्वर्तयतीति क्रियातोऽङ्गम्। टुप्टीका on जै. IV. 1. 18 p. 1207. This is called भूतभव्यसमुच्चारणन्याय in the तन्त्रवार्तिक on III. 4. 24 and II. 1. 12 and it has been employed elsewhere by the व्यवहारमयूख (p. 111 text). शबर very frequently employs this maxim; vide e. g. on जै. II. 1. 4.

1323. विवाहे तु दत्तकमात्रेण बीजिप्रतिग्रहीत्रोः पित्रोर्गोत्रप्रवरवर्जनं कार्यम्। प्रवरमञ्जर्यादिनिबन्धेषु तन्निषेधोक्तेः। सं. कौ. p. 182; विवाहे तु सर्वदत्तकेन जनकपालकयोरुभयोरपि पित्रोर्गोत्रप्रवरसम्बन्धिनी कन्या वर्जनीया। नात्र सातपौरुषं पात्रगोत्रमित्येवं द्व्यनियम उपलभ्यते। धर्मसिन्धु III पूर्वार्ध p. 161.

with a girl of the gotras of the natural and adoptive fathers is absolute and not restricted to seven or five degrees. Thus if there is no total or absolute cessation of gotra relation with the natural family for all purposes there is no reason why in the case of wealth already taken before adoption there should be a cessation or forfeiture or why the cessation of relation as to riktha should not be restricted to the future. As regards sapiṇḍa relationship there is some conflict among the digests. The D. M.[1234] states that the *dvyāmuṣyāyaṇa* has to observe the prohibitions against marrying a sapiṇḍa girl up to three degrees in the families of the natural father and of the adoptive father, while the simple dattaka has to observe sapiṇḍa relationship based upon the presentation of rice balls in the adoptive father's family for three generations (since the adopted son can generally have no particles of the body in common with the adoptive father) and in the natural family sapiṇḍa relationship based upon particles of the same body for seven generations. The Nirṇayasindhu (III. pp. 290–291) sets out the various conflicting views and gives it as its own opinion that the sapiṇḍa relationship must be looked to in marriage up to seven generations in the natural as well as in the adoptive family (in the latter it being based on the offering of balls of rice). According to the V. Mayūkha (p. 119) the simple adopted son has sapiṇḍa relationship in the adoptive father's family for seven generations and in the adoptive mother's family for five generations and it seems to hold that there is no sapiṇḍa relationship in the natural family (owing to Manu IX. 142). The D. C. (pp. 61–66) appears to hold that the dvyāmuṣyāyaṇa has to observe sapiṇḍa relationship (as stated in the D. M.), while as to the simple dattaka there is sapiṇḍa relationship only in the adoptive family for seven generations (as indicated by Manu IX. 142). The Dharmasindhu (III. p. 161) states that sapiṇḍa relationship depends in its degrees on the question whether the adoption is made after upanayana in the natural family or before upanayana or whether all saṁskāras from *jātakarma* are performed in the adoptive family.

1324. यद्विदमुभयत्र त्रिपुरुषसापिण्ड्याभिधानं तद् द्व्यामुष्यायणाभिप्रायेण त्रिकद्वयेन सपिण्डीकरणाभिधानात्। शुद्धदत्तकस्य तु प्रतिग्रहीतृकुले त्रिपुरुषं पिण्डान्वयरूपं सापिण्ड्यं जनककुले साप्तपौरुषमवयवान्वयरूपमेवेत्यलं प्रपञ्चेन। द. मी. p. 187; मम तु पालककुले एकपिण्डदानक्रियान्वयित्वरूपं साप्तपौरुषमेव सापिण्ड्यं, बीजिनश्चेति गोत्रमोक्षेऽजनककुलेपि तावदेव। नि. सि. III पूर्वार्धे p. 291.

The Bombay High Court[1325] has held that the adopted son cannot marry within prohibited degrees in the natural family, that to that extent an adopted son cannot be considered as not to have been born in his natural family and that the sapiṇḍa relationship is recognized in both the families for the purpose of prohibition of marriage.

The Nir. S., the Dharmasindhu[1326] and the D. C. pp. 48-49 declare that the adopted son can perform the śrāddha of his natural father if the latter has at his death no son or other qualified person to perform it. The Nir. S. and the Saṁ.[1327] K. (pp. 185-186) both say that the adopted son has to observe three days' mourning on the death of the natural father and *vice versa*; but the D. M. and D. C. (p. 68) differ and state that the simple adopted son has to observe no mourning for his natural father or other relatives in the natural family. If a married man having a son is given in adoption (which is possible in the Bombay Presidency) the son (born before the adoption) remains in the natural family and does not acquire the gotra and rights to property of the family into which his father is adopted. Yet the father who has gone into another family by adoption has been held to retain his right to give in adoption his son who was born before his own adoption and who remains in the natural family[1328].

From the above discussion it follows that the person adopted retains the tie of blood with his natural family (so that he cannot marry a girl within the prohibited degrees from that family), the saṁskāras already performed in the natural family are not repeated on him after adoption, he still retains the gotra so far that he cannot marry a girl having the same gotra as his natural father and further he has according to most writers to observe mourning for his natural father. Therefore it is clear that the severance from the natural family brought about by adoption is only partial and restricted to piṇḍa and riktha

1325. Vide *Bai Kesarba v. Shivsangji* 34 Bom. L. R. 1332 at p. 1352 and *Basappa v. Gurlingawa* 57 Bom. 74 at p. 81.

1326. दत्तकस्तु जनकपितुः पुत्राद्यभावे जनकपितुः श्राद्धं कुर्याद्धनं च गृह्णीयात्। जनकपालकयोरुभयोः पित्रोः सन्तत्यभावे दत्तको जनकपालकयोरुभयोरपि धनं हरेत्, श्राद्धं च प्रतिवार्षिकमुभयोः कुर्यात्। धर्मसिन्धु III उत्तरार्ध p. 371.

1327. दत्तक्रीतकृत्रिमादिपुत्रेषु अहीनवर्णगासु स्त्रीषु च सापिण्ड्येऽपि प्रसवे मरणे च पूर्वापरपित्रोर्भर्त्रोश्च त्रिरात्रमेव न दशाहादि। ... पितृमरणेऽपि दत्तकादीनां त्रिरात्रम्। नि. सि. III उत्तरार्ध p. 524; शुद्धदत्तकस्य जनककुले परस्परमशौचं नास्त्येव। गोत्रपिण्डनिवृत्त्याशौचनिवृत्तेरर्थसिद्धत्वात्। द्व्यामुष्यायणस्य तूभयत्रैवाशौचमिति। दत्त. च. p. 68.

1328. Vide *Martand v. Narayan* I. L. R. (1939) Bom. 586 (F. B.).

and connected matters and not *complete* as stated or assumed in some decided cases.

The adopted son is entitled to inherit in the adoptive family as fully as if he were a natural born son i. e. he may inherit not only to his adoptive father, but also to that father's brother or cousin if the latter have no son or no other nearer heir. The adopted son also inherits to the adoptive mother and her relations[1329], viz. her father and brother. Conversely, the adoptive mother and her relations in her father's family are entitled to inherit to him.

Vas. and Baud. both laid down that if after a son is taken in adoption an *aurasa* son is born to the adoptive father the former takes a fourth share. There is conflict among the smṛtis and the digests about the share of the adopted son when an *aurasa* is subsequently born, and about the meaning of 'a fourth share'. The Dāyabhāga (X. 13 p. 148) and V. C. p. 150 quote a verse of Kātyāyana[1330] that when an aurasa son is born, other kinds of sons, if of the same caste as the father, take only a third of the estate. It has been held in Bengal that in these circumstances the adopted son takes one third of his adoptive father's estate. In Benares and among Jains[1331] the adopted son gets one fourth of the estate. The S. V. p. 393 holds that he gets[1332] $\frac{1}{5}$th. In Bombay it[1333] has been held that the adopted son takes not $\frac{1}{4}$th of the whole estate, but $\frac{1}{4}$th of the share of the aurasa son i. e. $\frac{1}{5}$th (the aurasa son taking $\frac{4}{5}$ths). In Bombay the same rule applies among śūdras.[1334] But in Bengal and Madras it has been decided, relying on a passage in the

1329. दत्तकादीनां मातामहा अपि प्रतिग्रहीत्री या माता तत्पितर एव पितृन्यायस्य मातामहेष्वपि समानत्वात् । दत्त. मी. p. 198 ; शूद्रदत्तकस्य तु प्रतिग्रहीत्र्या एव मातुः पित्रादित्रिपिण्डदानम् । दत्त. च. p. 61. Vide *Dattatraya v. Gangabai* 46 Bom. 541 for the proposition that an adopted son is competent to inherit the property of his adoptive mother's ancestors.

1330. उत्पन्ने त्वौरसे पुत्रे तृतीयांशहराः स्मृताः । सवर्णा असवर्णास्तु ग्रासाच्छादनभागिनः ॥ कात्या. q. by दायभाग X. 13. p. 148, वि. चि. p. 150, विवादचन्द्र p. 80. Vide note 1234 for various readings and Kauṭ.

1331. Vide *Rukhab v. Chunilal* 16 Bom. 347 (holding that among Jains an adopted son is entitled to $\frac{1}{4}$th of the estate of the adoptive father when an aurasa son is subsequently born).

1332. तथा च कात्यायनः । उत्पन्ने त्वौरसे पुत्रे चतुर्थांशहराः सुताः । ... चतुर्थांशो नाम चातुर्थस्य योंशः समत्वेन परिकल्प्यते तत्तुल्योंशः पञ्चमांश इत्यर्थः । स. वि. p. 393.

1333. Vide *Giriappa v. Ningappa* 17 Bom. 100 (where the texts are exhaustively reviewed by Telang J), *Bala Krishnayya v. Venkata* 43 Mad. 398, 402 (where Kāt., Vas. and Baud. are referred to).

1334. Vide *Tukaram v. Ramchandra* 49 Bom. 672 (*held* that among śūdras an adopted son takes one fourth of the natural born son's share).

Dattakacandrikā (p. 98)[1335] that the adopted son and the subsequently born *aurasa* son of a śūdra share equally.[1336] If the estate is impartible property or an estate to be taken by lineal primogeniture and the owner first adopted a son and then he had an aurasa son, it has been held that the subsequently born aurasa son takes the whole estate.[1337] If there are two brothers who form a joint Hindu family and one of them has a natural born son and the other adopts a son, the adopted son of one brother gets on partition a share of the family estate equal to that of the natural born son of the other[1338] brother, since the rule of Vas. applies only as between the aurasa and dattaka sons of the *same man.*[1338a]

1335. अत एव-दत्तपुत्रे यथाजाते कदाचित्त्वौरसो भवेत् । पितुरिक्थस्य सर्वस्य भवेतां समभागिनौ ॥ इत्यपि वचनं शूद्रविषय एव योजनीयम् । दत्त. च. p. 98.

1336. Vide *Asita v. Nirode* 20 C. W. N. 901: *Perrazu v. Subbarayudu* L. R. 48 I. A. 280 (equal share among śūdras).

1337. Vide *Sahebgouda v. Shiddangouda* I. L. R. (1939) Bom. 314 (F. B.). Manu IX. 163 would support this decision.

1338. Vide *Nagindas v. Bachoo* L. R. 43 I. A. 56 where a passage of the D. C. is explained (at p. 65) which is as follows: एवं धनिनः पुत्रान्तरसत्त्वे सुतपितृकस्य दत्तकपौत्रस्यापि दत्तोचितांशभागित्वं तदसत्त्वे सर्वहरत्वमपीति । न च पौत्रस्य स्वपितृयोग्यांशभागित्वनियमात् दत्तकस्य ग्रहीतुः पितामहौरससत्त्वे तादृशपितृव्यतुल्यस्यैवांशस्य तद्योग्यत्वाद्दत्तकपौत्रः पितृव्यतुल्यमेवांशं लभतामिति वाच्यं, पुत्रस्य दत्तकत्वे चतुर्थांशः पौत्रस्य तु तथात्वे समानांश इति वैषम्यात् । ततश्च स्वसमानरूपस्य पितुर्यादृशांशः शास्त्रसिद्धस्तस्यैव स्वपितृयोग्यांशतेति यथोक्तमेव साधु । दत्त. च. pp. 89–90.

1338a. It appears to me that the V. Mayūkha went far beyond the spirit of the ancient smṛti texts and of most of the medieval digests when it allowed the adoption of a married man or even of one who had already had a son. The son to be adopted, it was declared by Śaunaka and others, should be a reflection of an aurasa son. Therefore he must be adopted at an age when by proper training and environment he will come to entertain towards the adoptive parents the same feeling that an aurasa son has. Hence it appears to me that the Legislature should intervene and provide that no one can be adopted after his upanayana, or at all events after his marriage, in the natural family. It is natural for a sonless man or a widow to feel, apart from religious considerations, the necessity of a young person as a solace, security and help in old age, and to adopt a person. Even in England by the Adoption of Children Act (16 and 17 Geo. V. chap. 29) the adoption of a minor is now allowed after observing certain formalities. Further, no adoption by a widow who has not become major according to the Indian Majority Act should be held valid. An agreement or a transfer of the smallest property by a person who is a minor according to that Act is held to be absolutely null and void. There is no reason why an adoption by a widow of 15 or 16 should be upheld when that adoption divests her of all (or now half of) the property of the husband held by her.

CHAPTER XXIX

ORDER OF SUCCESSION AFTER THE SON

It has been stated above that *dāya* is either *apratibandha* or *sapratibandha* and that sons, grandsons and great-grandsons take the first kind of dāya. If a man has no son either aurasa or secondary (viz. the dattaka, the other kinds of sons being now forbidden or obsolete), then his property devolves in a certain order. When a man dies sonless and is a member of a joint Hindu family then on the surviving coparceners the whole estate devolves except that after 1937 (by Act XVIII of 1937) his widow takes his place as to the joint family property. But if he dies separated and has male issue (from whom also he is separate) then his male issue will succeed to him in a body viz. his son, grandson (son of a predeceased son) and great-grandson (son of a predeceased son's predeceased son) will together take his separate property *per stirpes*. From Manu IX. 137 (which is the same as Vas. 17·5 and Viṣṇu Dh. S. 15. 46) and 186 and Yāj. I. 78 it follows that the son, grandson and great-grandson equally confer great spiritual benefit and so are the principal group of heirs. According to the strict theory of the Mitākṣarā as stated above, son, grandson and great-grandson take by birth an interest even in property acquired by a man himself, but they have no power to prevent him from alienating it. If one or more out of a man's sons, grand-sons or great-grandsons are separate from him then on his death his self-acquired property will first be taken by those sons, grandsons and great-grandsons that are joint with him and if none of these is joint with him, the separated son, grandson and great-grandson will succeed *per stirpes* to his estate.[1339]

This view is at least as old as the Baud.[1340] Dh. S. I. 5. 113-115 which speak of the three ascendants of a man, of himself,

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1339. Vide *Gangadhar v. Ibrahim* 47 Bom. 556, *Marudayi v. Doraisami* 30 Mad. 348. In *Ramappa v. Sithammal* 2 Mad. 182 (F. B.) a separated son was preferred as an heir to the widow of the deceased.

1340. अपि च प्रपितामहः पितामहः पिता स्वयं सोदर्या भ्रातरः सवर्णायाः पुत्रः पौत्रः प्रपौत्रस्तत्पुत्रवर्जं तेषां च पुत्रपौत्रमविभक्तदायं सपिण्डानाचक्षते । विभक्तदायानपि सकुल्यानाचक्षते । असत्स्वन्येषु तद्गामी ह्यर्थो भवति । बौ. ध. सू. I. 5. 113-115. The दायभाग (XI. 4, 5, 37) and दायतत्त्व p. 189 quote या., विष्णु and बौ., read 'सत्स्वङ्गजेषु तद्गामी ह्यर्थो भवति' and अविभक्तदायादानाम् and explain बौ. at length.

of his full brothers and of his son, grandson and great-grandson from a savarṇa wife as one group called *avibhakta-dāya* sapiṇḍas and that in the absence of these only, the wealth of a man goes to his sakulyas.

On the succession to the property of a man dying without male issue (i. e. without son, grandson or great-grandson) the basic texts are two verses of Yājñavalkya[1341] (II. 135–136): 'The lawfully wedded wife, the daughters and (the daughter's son), the parents, the brothers, their sons, *gotrajas* (agnatic kinsmen), *bandhu* (cognatic relation), a pupil, a fellow student—on failure of each preceding one out of these each succeeding one is entitled to take the wealth of a man who is dead (lit. who has gone to heaven) and who leaves no male issue. This rule applies to all varṇas'. The Viṣṇu Dh. S. (17. 4–15) is almost to the same effect. The word ' aputrasya ' in Yāj. is taken to mean one having no son, grandson or great-grandson (at the time of death) by V. C., Raghunandana and Mitramiśra[1342]. The Mit. explains the words ' to all varṇas ' as applying even to all that are the offspring of *anuloma* or *pratiloma* unions.

We have separate rules for inheritance to the property of males and to that of females. Then there is great difference as to the rights of women as heirs. First, inheritance to the property of males will be taken up. Here again the fundamental principles are different acc. to the Mit. and the Dāyabhāga.

Among the heirs (apart from male issue) of a man as regards his separate property the first is the widow. The wife's right to succeed to her deceased husband's estate, when he died separated and un-reunited, was acknowledged only after a long struggle extending over centuries. The passage of the Tai. S. VI. 5. 8. 2 speaking of women as ' adāyādīḥ ' has already

1341. पत्नी दुहितरश्चैव पितरौ भ्रातरस्तथा । तत्सुता गोत्रजा बन्धुशिष्यसब्रह्मचारिणः ॥ एषामभावे पूर्वस्य धनभागुत्तरोत्तरः । स्वर्यातस्य ह्यपुत्रस्य सर्ववर्णेष्वयं विधिः ॥ या. II. 135–136. The first is also लघुहारीत 64–65. Translations of these verses are cited in many cases; vide, for example, *Lallubhai v. Mankorebai* 2 Bom. 388, 416.

1342. अनपत्यस्य पुत्रपौत्रप्रपौत्रहीनस्य । पुत्रः पौत्रः प्रपौत्रो वा—इत्यादिना अमीषां पाठक्रमेणैव स्वधाधिकारे सिद्धे तत्समानशीलस्य रिक्थग्रहणस्यापि तथैवाधिकारसिद्धेः । वि. चि. p. 151 : अत्र अपुत्रपदं पुत्रपौत्रप्रपौत्राभावपरं तेषां पार्वणपिण्डदातृत्वाविशेषात् । दायतत्त्व p. 189 ; अपुत्रपदं पत्नीत्यादिषु श्रूयमाणं पौत्रप्रपौत्राभावोपलक्षणम् । व्य. प्र. p. 503.

been quoted (on p. 606). The meaning of that word is somewhat dubious, as will be shown later on. The Āp. Dh. S. II. 6. 14. 2 states generally[1343] that in default of a son the nearest sapiṇḍa succeeds but does not expressly mention the wife as an heir, though it mentions (in II. 6. 14. 4) the daughter as a possible heir. Baud. also omits the wife as an heir. Vas. mentions no woman as heir. Gaut. 28. 19 appears to state that the wealth of one who dies without issue should be taken by his sapiṇḍas, sagotras and sapravaras or his wife (i. e. according to Haradatta, the wife takes a share only along with the nearest sapiṇḍa or sagotra and not exclusively). Haradatta himself was of this view. Manu does not declare that the wife is the heir of a sonless man and there are certain passages which impliedly exclude her, as e. g. Manu IX. 185 (the father takes the wealth of a man dying sonless or his brothers take it), IX. 217 (the mother should take the wealth of a sonless man). Śaṅkha (q. by the Mit., Dāyabhāga XI. 1. 15) prescribes that the wealth of a man dying without issue goes to his brothers, failing them the parents take it or the eldest wife.[1344] Devala (q. by the Dāyabhāga XI. 1. 17–18 and V. R. p. 593) arranges the heirs in order as full brothers, daughters, father, half brothers, mother and wife. It may be noticed that in the days of Kālidāsa the sonless widow did not succeed to the wealth of her deceased husband, but was only entitled to maintenance and that the estate escheated to the king. This is clear from the letter written by the minister to king Duṣyanta about the wealth of a merchant who perished in a ship-wreck (Act VI). Yāj. and Viṣṇu among smṛti writers were probably the first to clearly enunciate the rule that the wife was the foremost heir of a man dying without male issue. Br. makes the wife the first heir of a sonless man and supports his

1343. पुत्राभावे यः प्रत्यासन्नः सपिण्डः । आप. ध. सू. II. 6. 14. 2; पिण्डगोत्रर्षिसम्बन्धा रिक्थं भजेरन् स्त्री वानपत्यस्य । गौ. 28. 19 on which हरदत्त say: 'स्त्री तु सर्वैः सगोत्रादिभिः सह्यभीयते । यदा सपिण्डादयो गृह्णन्ति तदा तैः सह पत्न्यप्येकमंशं हरेत् । ... पत्नीदायस्तु आचार्यस्य पक्षो न भवति ।'. On आप. II. 6. 14. 2 he gives the view of गौतम, 'गौतमस्तु पुत्राभावे पत्न्याः सपिण्डादिभिः समांशमाह । ... वयमप्येतमेव पक्षं रोचयामहे '.

1344. स्वर्यातस्य ह्यपुत्रस्य भ्रातृगामि द्रव्यं तदभावे पितरौ हरेयातां ज्येष्ठा वा पत्नी । शङ्ख (q. by मिता. on या. II. 135 and अपरार्क p. 741). दायभाग XI. 1, 15 p. 154 ascribes this text to शङ्खलिखित, पैठीनसि and यम and adds सगोत्रशिष्यसब्रह्मचारिणः after पत्नी. अपरार्क also ascribes it (p. 744) to शङ्खलिखित and पैठीनसि. The Mit. explains that it applies to re-united brothers.

opinion with reasons. He says:[1345] 'In the Veda and in the doctrines of the smṛtis and in popular usage the wife is declared to be half the body of the husband, equally sharing the consequences of good and evil acts. Of him whose wife is not dead half the body survives. How can another obtain the property, while half the body (of the deceased) lives? Although kinsmen, although his father, mother or his relatives may be alive, the wife of a man dying without issue succeeds to his share. A wife dying before her husband takes away his sacred fires (i. e. she is cremated with the sacred Vedic fires, if he be an Agnihotrin); but when the husband dies before the wife, she takes his property, if she be chaste'. Even when Yāj. proclaimed the paramount right of succession in the case of widows there were other smṛtis and some early commentators who did not subscribe to that view. Nār. (dāyabhāga, 25–26) provides that if among several brothers one who is childless dies or becomes an ascetic the others should divide the property excepting strīdhana, that they should make provision for his women till their death in case they remain faithful but if they are otherwise (i. e. unfaithful) they may cut off the allowance'. Nār. (dāyabhāga, 50–51) provides that on failure of sons, the daughter, *sakulyas, bandhus*, a man of the same caste, the king succeed in order and thus omits the wife altogether. Vyāsa[1346] (quoted by Haradatta on Gaut. 28·19 and by Sm. C. II. p. 281) holds that a wife may take the whole of the husband's property if it does not exceed 2000 paṇas in value. The Mit. tells us that Śrīkara espoused this position that the wife takes the whole if

1345. आम्नाये स्मृतितन्त्रे च लोकाचारे च सूरिभिः । शरीरार्धं स्मृता जाया पुण्यापुण्यफले समा ॥ यस्य नोपरता भार्या देहार्धं तस्य जीवति । जीवत्यर्धशरीरेऽर्थं कथमन्यः समाप्नुयात् ॥ सकुल्यैर्विद्यमानैस्तु पितृभ्रातृसनाभिभिः । असुतस्य प्रमीतस्य पत्नी तद्भागहारिणी ॥ पूर्वं मृता त्वग्निहोत्रं मृते भर्तरि तद्धनम् । विन्देत् पतिव्रता नारी धर्म एष सनातनः ॥ बृह. q. by अपरार्क pp. 740–41, दायभाग XI. 1. 2. pp. 149–150, कुल्लूक on मनु IX. 187, स्मृतिच. II. pp. 290–91 (ascribes the last to प्रजापति). The मिता. reads the third verse as कुल्येषु विद्यमानेषु ... समाभिषु. The तै. सं. VI. 1. 8. 5 reads 'अर्धो वा एष आत्मनो यत्पत्नी'. Vide H. of Dh. vol. II. p. 428 n. 1015 for passages from the Veda and Mahābhārata for the wife being deemed to be half of the body, pp. pp. 556–57 for husband and wife enjoying the fruits of their actions together, and p. 558 for wife's cremation with the Vedic fires and the sacrificial utensils of the husband. Both वसिष्ठ 21. 15 and पराशर X. 26 say 'पतत्यर्धं शरीरस्य यस्य भार्या सुरां पिबेत् । पतितार्धशरीरस्य निष्कृतिर्न विधीयते ॥'.

1346. द्विसहस्रपणो दायः पत्न्यै देयो धनस्य तु । यच्च भर्त्रा धनं दत्तं सा यथाकाममाप्नुयात् ॥ व्यास q. by हरदत्त on गौ. 28. 19, व्यव. नि. p. 450, विवादचन्द्र p. 72. The अनुशासन 47. 23 reads, त्रिसहस्रपरो दायः...भर्त्रा तच्च धनं दत्तं यथार्हं भोक्तुमर्हति ॥.

the property is small, but only maintenance if the property is large and refutes it by saying that it is opposed to the spirit of Yāj. who allows a share to the wife and the mother even along with sons when even joint family property is being partitioned and that the view is also liable to the fault of *vidhivaiṣamya* on the analogy of the Mīmāṁsā rule stated above on p. 605.[1347] The same text of Yāj. will have to be held as laying down only maintenance when the husband left great wealth, and also laying down a share equal to that of a son when the husband leaves inconsiderable wealth.[1347a] Another view was maintained

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1347. पिण्डगो...... नपत्यस्य । बीजं वा लिप्सेत । गौ. 28. 19–20. This is explained by धारेश्वर as 'स्त्री वा रिक्थं भजेत यदि बीजं लिप्सेत'. The मिता. says that this really means that there are two courses open to the widow, viz. she may remain chaste and succeed along with the sapiṇḍas or she may resort to niyoga.

1347a. Jai. VII. 3. 19–25 as understood by the Mit. may be briefly explained as follows: The Cāturmāsyas (seasonal sacrifices) are four, Vaiśvadeva, Varuṇapraghāsa, Sākamedha, Śunāsīriya (vide H. of Dh. vol. II. pp. 1091–1105 for description). In regard to these the following texts occur in the Veda and are cited by Śabara and others: द्वयोः प्रणयन्ति । तस्माद् द्वाभ्यां यन्ति ऊरू वा एतौ यज्ञस्य यद्वरुणप्रघासश्च साकमेधश्च । तस्माद् द्वाभ्यां यन्ति । ... उपात्र वपन्ति । न वैश्वदेवे उत्तरवेदिमुपकिरन्ति न शुनासीरीये । (They carry forward the fire in these two; therefore they march on two; indeed the Varuṇapraghāsa and Sākamedha are the two thighs of *yajña*; therefore they (are said to) march on two: they fill with earth (the *uttaravedi*) here, but not so in Vaiśvadeva nor in Śunāsīriya). Śabara reads 'उत्तरवेदिमुपवपन्ति' while Mit. reads as above. *Praṇayana* means 'carrying towards the east fire from the Gārhapatya fire to the Āhavanīya.' There is praṇayana in the Darśapūrṇamāsa which is simple (and without details) and there is also praṇayana in Agniṣṭoma which is full of details (and not simple). An *uttaravedi* (vide H. of Dh. vol. II. pp. 1096–1097 for description) is not required in Darśapūrṇamāsa, but it is required in a Soma sacrifice. The cāturmāsyas are modifications (*vikṛti*) of the Darśapūrṇamāsa, so that whatever is prescribed in the latter follows in the absence of express directions as a matter of course in the former. In the texts quoted above the words 'dvayoḥ praṇayanti' lay down a *vidhi* and the words 'tasmād ... sākamedhaśca' contain an *arthavāda* which forms a syntactical whole with the vidhi and which only eulogizes it. The *pūrvapakṣa* argues: As cāturmāsyas are modifications of Darśapūrṇamāsa, it is unnecessary to lay down expressly a simple praṇayana in them; therefore, the praṇayana prescribed in 'dvayoḥ praṇayanti' must be the praṇayana as described in a Soma sacrifice. Further the prohibition of an uttaravedi in Vaiśvaveda and Śunāsīriya indicates the same, since a prohibition implies that there was a fear that what is prohibited would have otherwise followed and since an

(*Continued on the next page*)

by the Smṛtisaṅgraha and Dhāreśvara, viz. that the wife would

(*Continued from the last page*)

uttaravedi is required only in a Soma sacrifice. Therefore the praṇayana prescribed in 'dvayoḥ praṇayanti' is of the Somapraṇayana type. To this a partisan of the *siddhāntin* (siddhāntaikadeśin) replies as follows:—The real view is that in *dvayoḥ praṇayanti* the praṇayana is of the simple darśapūrṇamāsa type and the prohibition about Vaiśvadeva and Śunāsīriya is not to be explained as you do; in the words 'upātra vapanti' an *uttaravedi* is generally (without exception) prescribed for all cāturmāsyas, but in the following two sentences 'na vaiśvadeve &c.' the preparation of uttaravedi is forbidden in the case of Vaiśvadeva and Śunāsīriya; therefore the partisan says that the idea is that, though the praṇayana is of the simple darśapūrṇamāsa type, yet an uttaravedi is prepared in the 2nd and 3rd but not in the first and fourth of the cāturmāsyas. The pūrvapakṣin retorts that even on this construction *vidhivaiṣamya* would still be there as follows: as there is prescription of uttaravedi in all four and prohibition in two (viz. the first and fourth of the four cāturmāsyas), there is an option of uttaravedi in those latter two (as the rule is 'tulyabala-virodhe vikalpaḥ') and there is no option as to the other two and there will arise the fault of *vidhivaiṣamya*, the same sentence viz. 'upātra vapanti' being taken as an unqualified and independent rule about the 2nd and 3rd of the cāturmāsyas and taken as an optional rule as to the 1st and 4th.

The proper siddhānta view is as follows: Though the words 'dvayoḥ praṇayanti' are very general, they are to be narrowed down so as to refer to only two (viz. 2nd and 3rd of the cāturmāsyas) on account of the recommendatory passage that follows (speaking of Varuṇapraghāsa and Sākamedha as the thighs of cāturmāsya yajña). The vidhi and the following arthavāda form one syntactical whole (*ekavākya*), as laid down by Jai. I. 2. 7. The arthavāda passage means that just as a man marches on in strength if his thighs are strong, so the cāturmāsya sacrifice reaches a successful close by means of Varuṇapraghāsa and Sākamedha in which an uttarvedi is specially prepared and fire is laid thereon (being taken from the āhavanīya fire by the adhvaryu and pratiprasthātṛ). Therefore the meaning is that there is praṇayana in the 2nd and 3rd out of the four cāturmāsyas and uttaravedi is prescribed in those two alone and the words 'there is no uttaravedi in Vaiśvadeva and Śunāsīriya' are a mere *anuvāda* (repetition of what is already known) and not a prohibition, as in the words 'fire should be kindled on the earth and not in the sky nor in heaven'. On this interpretation there is no vidhivaiṣamya. Sabara makes two *adhikaraṇas* of Jai. VII. 3. 19-25, while Kumārila makes one adhikaraṇa of these seven sūtras. He further differs as to the siddhānta, which, according to him, is that in 'dvayoḥ praṇayanti' there is a special (*apūrva*) kind of praṇayana prescribed, *prākṛta* (of darśapūrṇamāsa type) and *saumika* praṇayana being the two other views which he rejects. The Subodhinī on the Mit. very lucidly explains this discussion and concludes: यथा तत्रैकदेशिमते विधिवैषम्यं दोषस्तथा 'पत्न्यः कार्याः समांशिकाः,' 'माताप्यंशं समं हरेत्' इत्यत्र च सकृदाम्नातो अंशसमशब्दावपि भर्तृबहुधनत्वपक्षे 'भरणं चास्य कुर्वीरन्' इत्यादिवाक्यपर्यालोचनया जीवनोपयुक्तधनपरौ स्वल्पधनत्वे तु वाक्यान्तरनैरपेक्ष्येण निरपवादपुत्रांशसमांशपराविति श्रीकराद्युक्तव्याख्यानेऽपि विधिवैषम्यदोषो दुर्वार इति। The Bālambhaṭṭī repeats the Subodhinī almost word for word. This *nyāya* occurs in Dāyabhāga XI. 5. 16 also.

take the estate of her sonless deceased husband if she submitted to *niyoga* and procured a son for the husband. This view derived support from Gautama 28·19-20, Vas. 17·65 (who prohibits niyoga if resorted to through greed of wealth), and Manu IX· 146 and 190 (which call upon the surviving brother to procreate a son on the widow of his brother and to hand over the deceased's share to that son). This view is refuted by the Mit.,[1348] Sm. C. II. p. 294, V. P. pp. 495-497.

Even Medhātithi,[1349] generally a liberal writer, holds that the widow is prohibited from inheriting her husband's wealth.

The Mit. after an elaborate statement and refutation of the views of Śrīkara, Dhāreśvara and others due to the conflict among smṛti texts on the question of the widow's right of succession, establishes the proposition that the widow, if chaste, is entitled to the whole of her deceased sonless husband's wealth.[1350] Almost all writers since the time of the Mit. accept the widow's right to succeed to her husband's wealth. Many writers note that the smṛti texts on the heirship of the widow are in conflict.[1351] They explain verses like those of Nār. (dāyabhāga 25-26) providing only maintenance for women either as

1348. तथा सङ्ग्रहकारः । भ्रातृषु अविभक्तेषु संसृष्टेष्वप्यसत्सु च । गुर्वादेशान्नियोगस्था पत्नी धनमवाप्नुयात् ॥ इति । गुर्वादेशान्नियोगस्थेति धारेश्वरमतं विश्वरूपादिभिः सम्यग्दूषितत्वादुपेक्षणीयम् । स्मृतिच. II. p. 294; एतेषामन्योन्यविरुद्धानां वचनानां धारेश्वर इत्थं व्यवस्थामाह । विभक्तासंसृष्टभ्रातुरपुत्रस्य पत्नी यदि नियोगमङ्गीकुरुते तदैव पतिधनं लभते । अनियोगार्थिन्यां तु तस्यामविभक्तसंसृष्टपत्नीवद्भरणमात्रमेव । नियोगद्वारेवापुत्रपत्न्याः पतिस्वापतेयस्वामित्वम् । व्य. प्र. p. 495.

1349. अतो यन्मेधातिथिना पत्नीनामंभशागित्वं निषिद्धमुक्तं तदसम्बद्धम् । पत्नीनामंशभागित्वं बृहस्पत्यादिसंमतम् । मेधातिथिर्निराकुर्वन् न प्रीणाति सतां मनः ॥ कुल्लूक on मनु IX. 187.

1350. तस्मादपुत्रस्य स्वर्यातस्य विभक्तस्यासंसृष्टिनो धनं परिणीता स्त्री संयता सकलमेव गृह्णातीति स्थितम् । मिता. on या. II. 135.

1351. अथापुत्रस्य मृतस्य धने परस्परविरुद्धवचनदर्शनेन व्याख्यातारो विवदन्ते । दायभाग XI. 1. 1; एतद्विरुद्धानीव वाक्यानि लक्ष्यन्ते । मिता. on या. II. 135. It may, however, be noted that in a small treatise cal ed श्वश्रूस्नुषाधनसंवाद of which there are three Mss. in the Maharaja's Sarasvati Mahal Library at Tanjore (Nos. 19003-5 described in vol. XVIII of their new Descriptive Catalogue) an attempt is made to establish that, if a man dies leaving a widow and his mother, both take equal shares in the estate. The mainstay of the argument is a verse of Kāt. quoted in the व्य. मयूख 'भो स्नुमर्हति कृत्स्नांशं गुरुशुश्रूषणे रता । न कुर्याद्यदि शुश्रूषां चैलं पिण्डं नियोजयेत्' from which the conclusion drawn is 'श्वश्रूश्वशुरादिगुरुशुश्रूषणे रतायास्तदनुमतायाः संयतायाः तद्विरायां च सत्यां पत्न्या धनहारित्वं नान्यथा'.

referring to exclusively kept concubines of the deceased or to the wives of re-united coparceners.

Patni means a woman who is married to the deceased, the word being formed from 'pati' with an affix in the sense of 'being fit to join with the husband in the performance of sacrifice' (Pāṇini IV. 1. 33). The Sm. C. II. p. 290 quotes a verse that a woman who is procured for sexual intercourse in exchange for money is only a *dāsī* and is not a *patnī* and therefore is not entitled to inherit to a sonless paramour.[1352] The Baud. Dh. S. I. 11. 20 quotes a similar verse. Several texts require that the widow must be chaste before she can claim the inheritance of the deceased. A text attributed to Vṛddha-Manu[1353] says, 'The wife alone, being sonless and keeping the bed of her lord unsullied and leading a life of religious observances, may offer piṇḍa to her deceased husband and take his entire estate'. Kāt. (926) also declares that 'the wife who is chaste takes the wealth of her husband'. The widow must be chaste at the time the inheritance opens. The courts have held that once the husband's estate is vested in the widow, it will not be divested or forfeited by reason of *unchastity subsequent* to the death of the husband.[1354] If the widow remarries after inheriting, then, though the remarriage of a widow is legalized by the Hindu Widows' Remarriage Act (XV of 1856), she forfeits the estate of the husband taken by her or the estate which she took as a widowed mother of her deceased son and it passes to the other heirs of the husband or son as if she were then dead and this applies to widows of all castes according to almost all High Courts (even when remarriage

1352. क्रयक्रीता तु या नारी न सा पत्नी विधीयते। न सा दैवे न सा पित्र्ये दासीं तां कश्यपो विदुः॥ q. by स्मृतिच. II. p. 290, व्य. प्र. p. 488; क्रीता द्रव्येण या नारी सा न पत्नी विधीयते। सा न दैवे न सा पित्र्ये दासीं तां काश्यपोऽब्रवीत्। बौ. ध. सू. I. 11. 20. This is cited as Manu's in व्यव. नि. p. 397, which quotes a similar verse of Yama on p. 398. व्य. प्र. 488 says 'अत्र च दासीत्वकथनमदृष्टार्थकर्मसु सहाधिकाराभावाभिप्रायेण। न तु दासीवद्द्रव्यत्वाभिप्रायेण। विवाहितात्वेन परदारत्वबाधात्।'

1353. अपुत्रा शयनं भर्तुः पालयन्ती व्रते स्थिता। पत्न्येव दद्यात् तत्पिण्डं कृत्स्नमंशं लभेत च। वृद्धमनु q. by मिता. on या. II. 135, दायभाग XI. 1. 7, वि. र. p. 589; पत्नी भर्तुर्धनहरी या स्यादव्यभिचारिणी। कात्या. q. by the मिता. on या. II. 135.

1354. Vide *Moniram v. Kerry* L. R. 7 I. A. 115; *Sellam v. Chinnammal* 24 Mad. 441; *Nehalo v. Kishen* 2 All. 150 (F. B.)

is allowed by the custom of the caste to which the widow belongs).[1355]

According to the Dāyabhāga there being no *apratibandha dāya*, the widow of a sonless member even in a joint family succeeds to his share in the family property and there is no difference between joint family property and separate property.

In the case of śūdras, if the owner dies leaving a widow or a daughter or a daughter's son and an illegitimate son, it has been held by the courts following Yāj. II. 134, the Mit. and Dāyabhāga IX. 31 that the widow or daughter or daughter's son takes one half and the illegitimate son takes the other half.[1356]

The rights of the widow in property inherited by her from her husband are limited. Kauṭ. III. 2 was[1357] probably the first to propound clearly the characteristics of the Hindu widow's estate and the verse of Kāt. quoted below is remarkably close to the words of Kauṭ. The Mahābhārata (Anuśāsana 47. 24) states that women have only the right to enjoy the estate of their husbands and that they should not waste or destroy the

1355. Vide *Vithu v. Govind* 22 Bom. 321 (F. B.) and *Murugayi v. Viramakali* 1 Mad. 226; but *Bhola v. Kausilla* 55 All. 24 (F. B.) holds that a woman belonging to a caste in which remarriage of widows is allowed by custom does not forfeit on remarriage the estate of the first husband which she took as his widow, the principal reasons being that there is no express text about forfeiture on subsequent unchastity and that it would be absurd to hold that a widow, who, on the P. C. ruling in 7 I. A., does not forfeit the estate taken as heir by subsequent unchastity, should be liable to forfeit it by remarriage (which presumes that she wants to live a decent life). Looking to the expressed object of the Hindu Widows' Remarriage Act, section 2 should not have been so interpreted as to apply to widows who could remarry according to caste custom before the Act.

1356. Vide *Shesgiri v. Gireva* 14 Bom. 282; *Meenakshi v. Appakutti* 33 Mad. 226 (in this case the original authorities are mentioned and discussed). Vide अभ्रातृको हरेत्सर्वं दुहितॄणां सुताद्दते । या. II. 134 ; अथ परिणीतापुत्रा न सन्ति तदा कृत्स्नं धनं दासीपुत्रो गृह्णीयाद्यदि परिणीतादुहितरस्तत्पुत्रा वा न सन्ति। तत्सद्भावे तु अर्धभागिक एव दासीपुत्रः । मिता. ; तदाह याज्ञवल्क्यः । अभ्रा ... द्दते । सति तु दौहित्रे समं विभज्य गृह्णीयाद्विशेषाश्रवणात् । दायभाग IX. 31 p. 143.

1357. अपुत्रा पतिशयनं पालयन्ती गुरुसमीपे स्त्री धनमायुःक्षयाद् भुञ्जीत । आपदर्थं हि स्त्रीधनम् । ऊर्ध्वं दायादं गच्छेत् । अर्थशास्त्र III. 2 p. 153; स्त्रीणां स्वपतिदायस्तु उपभोगफलः स्मृतः । नापहारं स्त्रियः कुर्युः पतिवित्तात्कथंचन । अनुशासन 47. 24 q. by विवादचन्द्र p. 71, वि. चि. p. 152, the व्य. म. p. 491, दायभाग XI. 1. 60 (latter three quote it as from the महाभारत).

husband's estate (by gift, sale &c.). Bṛ.[1358] (S. B. E. vol. 33 pp. 377–78 verses 50–51 and 53) states : ' when the husband is separate his widow takes all his various kinds of property such as a pledge, except immovable property. After having received movable and immovable property, gold, inferior metals, grain, liquids and clothes the widow shall cause (her husband's) monthly, six-monthly and annual śrāddhas to be performed. Let her honour with funeral offerings and pious charity her husband's paternal uncle, *gurus* (elders), daughter's son, sister's son and maternal uncle as also aged or helpless persons, guests and women '. Mādhava (Par. M. III. p. 536) explains that ' except immovable property ' means that she is prohibited from making a sale of immovable property without the consent of the male kinsmen. The V. Mayūkha (p. 138) accepts this interpretation and modern courts have done the same. In *Damodardas v. Purmanandas* 7 Bom. 155 it was held that a widow to whom movable property was bequeathed by the will of her husband takes it absolutely. But here the movable property was not *inherited* by her and as it was a bequest by will it became her strīdhana according to Nār. (q. by V. M. on p. 155). Besides, this was a case from Bombay Island and was governed by the law of V. Mayūkha. In some early cases in Bombay it had been held that a widow in Western India under the Mitākṣarā had absolute power over the movable property inherited by her from her husband. In *Gadadhar v. Chandrabhagabai* 17 Bom. 690 (F. B.) it was held that under the law of the Mitākṣarā a widow has no power to bequeath moveable property inherited by her from her husband and that to that extent the decision in *Damodar v. Purmanandas* must be treated as of no authority if it be interpreted to have decided the point in that way. In *Sha Chamanlal v. Doshi Ganesh* 28 Bom. 453 it was decided that even under the Mayūkha a widow inheriting movable property from her husband has no

1358. यद्विभक्ते धनं किंचिदाध्यादि विविधं स्मृतम्। तज्जाया स्थावरं मुक्त्वा लभेत मृतभर्तृका॥ जङ्गमं स्थावरं हेम कुप्यं धान्यं रसाम्बरम्। आदाय दापयेच्छ्राद्धं मासषाण्मासिकाब्दिकम्। पितृव्यगुरुदौहित्रान्भर्तुः स्वस्रीयमातुलान्। पूजयेत्कव्यपूर्ताभ्यां वृद्धानाथातिथीन् स्त्रियः॥ बृह. q. by स्मृतिच. II. p. 291, वि. र. p. 590 (last two), मदनरत्न (folio 99b), परा. मा. III. p. 536, व्य. मयूख pp. 137–138. The स्मृतिच., मदनरत्न and व्य. मयूख ascribe the last two to प्रजापति. The मदनरत्न says that the verse यद्विभक्ते was ascribed to बृह. by the स्मृतिचन्द्रिका, but it should be disregarded as it is opposed to the verse जङ्गमं स्थावरं quoted in the कल्पतरु and others as that of बृह. । ' स्थावरं मुक्त्वेत्यभिधानं दायादानुमतिमन्तरेण स्थावरविक्रयनिषेधपरमिति माधवीये विद्यारण्यश्रीचरणाः । ' मदनरत्न (folio 99b).

power to dispose of it by will. Lastly in *Pandharinath v. Govind* 32 Bom. 59 it was held, after an elaborate examination of authorities, that a widow is not under the Mitākṣarā competent to make a gift of the movables inherited by her from her husband and it was said (on p. 75) that possibly with the spread of education amongst, and the general emancipation of, their women Hindus may be led to call in aid the relief of Legislature. In cases arising under the Mayūkha a widow may dispose of movable property inherited by her from her husband by gift *inter vivos* but not by will. Kāt.[1359] (921, 924-925) propounds the limitations of the widow's rights as follows: 'A sonless widow, preserving the bed of her husband (unsullied) and residing with her elders and being self-controlled, should enjoy (her husband's property) till her death; after her the (other) heirs (of the husband) would get it. A wife who preserves (the honour of) the family would get the share of her husband when he is dead till her death, but she has no power to make a gift, sale or mortgage. A widow engrossed in religious observances and fasts, fixed in the vow of celibacy, always intent on restraining her senses and making gifts goes to heaven even though sonless'.[1360] These verses show that the widow was to enjoy the income of her husband's property till her death; that she could not sell or mortgage or give away immovable property without the consent of the heirs that would come after her and that for religious and charitable purposes or those that conduce to the spiritual welfare of her husband a widow had large powers of disposition. These rules

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1359. अपुत्रा शयनं भर्तुः पालयन्ती गुरौ स्थिता। भुञ्जीतामरणात्क्षान्ता दायादा ऊर्ध्वमाप्नुयुः॥ कात्या. q. by दायभाग XI. 1. 56, स्मृतिच. III. p. 292; मृते भर्तरि भर्त्रंशं लभेत कुलपालिका। यावज्जीवं न हि स्वाम्यं दानाधमनविक्रये। व्रतोपवासनिरता ब्रह्मचर्ये व्यवस्थिता। दमदानरता नित्यमपुत्रापि दिवं व्रजेत्॥ कात्या. q. by स्मृतिच. II. p. 292, व्य. मयूख p. 138. The D. B. adds, 'अतः पत्नी दुहितरश्चेत्यादिना ये पूर्वपूर्वस्याभावे परभूताधिकारिणो निर्दिष्टास्ते यथा पत्न्यधिकारप्रागभावे गृह्णीयुस्तथा जाताधिकारायाः पत्न्या अधिकारध्वंसेपि भोगावशिष्टं धनं गृह्णीयुः।' दायभाग XI. 1. 59. The first verse is quoted in *Bhugwandeen v. Myna Baee* 11 Moo. I. A. 487 at p. 512, 8 Mad. 290, 292, 5 Patna 646, 678. These verses are quoted or referred to in 8 Mad. 290, 292, *Pandharinath v. Govind* 32 Bom. 59 (which holds that according to the Mit. a Hindu widow cannot make a gift even of the movables inherited by her from her husband), 42 Bom. 136, 143.

1360. It was believed that one to whom no son was born did not go to heaven (vide Ait. Br. 'nāputrasya lokosti' quoted above on p. 654 n. 2239). An exception was made in the case of those who observed perpetual studenthood (Āp. Dh. S. I. 1. 4. 29) and Manu extends it to chaste widows (V. 159-160). Vide Viṣṇu Dh. S. 25. 17.

have been accepted by modern decisions; vide *Collector of Masulipatam v. Cavaly Vencata* 8 Moo. I. A. 500 at p. 551 for an oftquoted passage about the widow's powers of disposal. There is a large volume of case law on the widow's powers of alienation, on what are religious and charitable purposes and about the consent of the kinsmen, which have to be passed over here. The heir or heirs expectant on the death of a widow are called reversioners or reversionary heirs in the decided cases. There is no exact Sanskrit word to convey the same idea except 'dāyāda' that occurs in Kāt. quoted above and in D. B., which makes it clear that the reversioners take the estate after the widow's estate ends (by death, remarriage, surrender &c.). The doctrine of the surrender by the widow of her estate in favour of the next heirs (the reversioners) whose estate is said to be accelerated is based on meagre foundations viz. the words of Kāt. and the D. B. quoted in n. 1359. Judicial decisions, however, have raised a stupendous structure on these slight foundations; but they are passed over here.

If a man dies leaving several widows then they may partition the property equally among themselves, as stated by the Mit.[1361]

If after partitioning among themselves, one of the widows dies, the portion given to her comes to the other widow or widows i. e. there is survivorship among them and no one else can succeed to the husband's property as long as there is any widow alive and not remarried. Hindu Law does not favour the distribution of a deceased man's estate among his several relatives, as some other systems (like that of the Moslems) do. It gives the whole estate to one heir or one class of heirs to the exclusion of all others. It is greatly to the credit of the ancient Hindu Law that it boldly gave all the separate property of a deceased male to women, viz. to the widow and after her to the daughter in preference to the man's own father or brother or nephew. Attempts are now being made through the Legislature that even when there are sons, the widow and daughters of the deceased should be given shares. Though these efforts spring from the laudable motive of enlarging the rights of women, they do not deserve unqualified encouragement. They will produce friction, cause fragmenta-

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1361. ताश्च बह्व्यश्चेत्सजातीया विजातीयाश्च तदा यथांशं विभज्य गृह्णन्ति । मिता. on या. II. 135.

tion of lands, make holdings uneconomic and it is extremely doubtful whether they are in the best interests of society or nation as a whole and whether the vast mass of Hindus want them. Prajāpati[1362] says that the king should punish as thieves those sapiṇḍas and relatives that oppose or obstruct a widow in succeeding to her husband's estate.

The words of the Tai S. quoted above (p. 606) about women being without strength and not entitled to dāya (adāyādīḥ) really occur in the ritual of Soma offerings and should mean that women are not allowed to share in the drinking of Soma. But the Baud. Dh. S. (S. B. E. vol. 14 p. 231) appears to have taken them as excluding women from inheritance. Manu IX. 18 also relies on it and declares that the *saṁskāras* on women (except marriage) are not to be performed with Vedic mantras, as the Veda declares them to be 'nirindriya' and 'anṛta'. Later writers like Haradatta (on Gaut. 28. 19, Āp. Dh. S. II. 6. 14. 1) and V. P. pp. 517 and 554 base the exclusion of women from inheritance on this passage of the Veda. They say that, though the Vedic text is very sweeping and general, it is meant to exclude only women other than those expressly mentioned in the smṛtis as entitled to inherit. For example, the Dāyabhāga XI. 6. 11 quotes Baud. and remarks that the wife is entitled to inherit because of special texts (like those of Yāj. and Viṣṇu) in her favour. The Sm. C. II. p. 294[1363] says that the Vedic passage is only an *arthavāda* (meant for praise) and not an absolute rule and it must be taken as not referring to those women that are expressly mentioned (lit. by being seized by the horn). The V. P. says the same. Aparārka (p. 743) holds that the Vedic passage is merely an *anuvāda* and excludes women only when there is a son. It should be noted that the Par. M. (III. p. 536) holds that the Tai. S. passage merely means that the wife of the sacrificer is not entitled to partake of Soma

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1362. तत्सपिण्डा बान्धवाश्च ये तस्याः परिपन्थिनः । हिंस्युर्धनानि तान्राजा चौर्यदण्डेन शासयेत् ॥ प्रजापति q. by स्मृतिच. II. p. 294, वि. चि. p. 151.

1363. यत्तु श्रुतौ चोक्तं तस्मात्स्त्रियो निरिन्द्रिया अदायादा इति तदपि न बृहन्मन्वादिवचनबाधकम् । निरिन्द्रियपुत्रसाहचर्यादपत्यभूतस्त्रीविषयत्वावगतेः । भवतु वा सर्वस्त्रीविषयत्वावगतिः । तथापि दायादतया शृङ्गग्राहिकोक्तपत्न्यादिस्त्रीव्यतिरिक्तविषया अर्थवादश्रुतिरिति सर्वं सुस्थम् । स्मृतिच. II. p. 294 ; यत्तु तस्मात् स्त्रियो ... अदायादा इति श्रुतिवचनं तन्मूलकं च ' निरिन्द्रिया ... निरयमिति स्थितिः ' इति मनुवचनं तद् द्वयमपि यासां शृङ्गग्राहिकया धनग्रहणं नोक्तं तद्विषयमवसेयम् । गौतममिताक्षरायां हरदत्तोऽप्येवमाह । व्य. प्र. p. 517 ; यदपि चार्थवादवचनं तस्मात् ... अदायादाः—इति तदपि यथाप्राप्ति वर्णनीयमनुवादकत्वादिति पुत्रसद्भावविषयत्वेन व्याख्येयम् । अपरार्क p. 743.

taken in the Pātnīvata cup and that 'indriya' means Soma drink.[1364] But Mādhavācārya in his comment on the Tai. S. I. 4. 27 quotes Tai. S. VI. 5. 8. 2 and explains it somewhat differently as meaning that women being without strength do not take the heritage when there are children. It is very remarkable that both the Mit. and the V. Mayūkha do not at all refer to the Tai. S. or Baud. Dh. S. in speaking of the rights of women to inheritance. It cannot be said that they were unaware of them, but probably they took the Tai. S. text in the sense in which the Par. M. explains it. The result of the reliance on the Tai. S. and on Baud. by most medieval digests has been that in the whole of India except in the Madras and Bombay provinces only five females are recognized as heirs viz. the widow, the daughter, the mother, the father's mother and paternal grand-father's mother, because they were expressly mentioned as heirs in the smṛtis or early commentaries. This subject will be pursued further a little later on.

The right of the wife to maintenance during her husband's life time has already been dealt with in H. of Dh. II. pp. 568-569. If the wife was guilty of unchastity but repented of her lapse, she was still entitled to be maintained by the husband (vide H. of Dh. II. pp. 571-573). As regards the rights of maintenance of the widows of deceased members of a joint Hindu family there is a good deal of case law which is passed over here. One or two points may be noted. The right of the widows in a joint Hindu family are conditional upon their leading a life of chastity. Male members are often unwilling to maintain widows who are often compelled to go to court. In the 'Selections from Peshwa Daftar', vol. 43, there is an order (letter No. 142) of Rāmaśāstrī, the chief justice of the Peshwa's court, calling upon one Bapuji Tambavekar under threat of penalties to restore the ornaments of the widow of his elder brother (that had died only seven days after marriage) and to give her a yearly maintenance of Rs. 125.

Daughters.—Daughters do not inherit as long as any widow of the deceased owner is alive. The daughter also had to

1364. या च श्रुतिः—तस्मात्स्त्रियो ... अदायादीः—इति सा पात्नीवतग्रहे तत्पत्न्या अंशो नास्तीत्येवंपरा। इन्द्रियशब्दस्य 'इन्द्रियं वै सोमपीथः' इति सोमे प्रयोगदर्शनात्। परा. मा. III. p. 536. This explanation of the परा. मा. is noted by the व्य. म. p. 517, which adds that the sentence is only meant to extol the importance of the Pātnīvata cup (of Soma). The व्यव. नि. p. 459 has almost the same words as those of परा. मा.

struggle hard for recognition as heir just as the widow had. Gaut., Baud. and Vas. omit the daughter as an heir. Āp. Dh. S. II. 6. 143 recognizes the daughter as an optional heir (probably with sapiṇḍas). When Manu IX. 130 declares, 'one's son is like one's self and one's daughter is equal to one's son; how can another person take the wealth (of the deceased) when she who is the very self (of the deceased) lives', it appears from the context (IX. 128–129) that it is the *putrikā* (the daughter appointed as a son) that is intended to be referred to therein. Medhātithi, Nārāyaṇa and Kullūka interpret the word 'duhitā' in Manu IX. 130 as applicable to the putrikā only. In the Nirukta,[1365] Yāska cites Ṛg. III. 31. 1 as relied upon by those who support the claims of the daughter to inheritance and also derives the word 'duhitā' in various ways, but from his explanation of Ṛg. III. 31. 1 it appears that he is referring to the putrikā's right of inheritance. As the usage of appointing a daughter as a son became gradually obsolete, the ordinary daughter came to be recognized by analogy as the heir of a sonless man after the widow. Yāj. and Viṣṇu both recognize the daughter as an heir after the widow. Nār. (dāyabhāga, 50) recognizes[1366] the daughter as an heir after the son on the ground that she continues the lineage (of the deceased father) just like a son. When Nār. (dāyabhāga, 27) speaks of the daughter being entitled to maintenance till marriage, the context shows (as remarked by the Sm. C. II. p. 296) that he is referring to the daughter of a person who was re-united at the time of his death. Bṛ. declares[1367] (S. B. E. 33 p. 378 verses 55–56), 'the wife is declared to be the inheritor of the husband's wealth and, in default of her, the daughter; the daughter, like a son, springs from the limbs of a man: how can another man inherit her father's property while she lives?'. Though the words of Yāj., Viṣṇu and Bṛ. were clear enough ancient com-

1365. अथैतां दुहितृदायाय उदाहरन्ति । पुत्रदायाय इत्येके । शासद्वह्निर्दुहितुर्नप्त्यं गाद्° । (ऋ. ३. ३१. १); प्रशास्ति वोढा सन्तानकर्मणे दुहितुः पुत्रभावम् । दुहिता दुर्हिता दूरे हिता दोग्धेर्वा । निरुक्त III. 3–4.

1366. पुत्राभावे तु दुहिता तुल्यसन्तानकारणात् । पुत्रश्च दुहिता चोभौ पितुः सन्तानकारकौ ॥ नारद (दाय० ५०); या तस्य दुहिता तस्याः पित्र्योंऽशो भरणे मतः । आसंस्कारं भजेरंस्ता परतो बिभृयात्पतिः ॥ नारद (दायभाग 27) ; स्यादेवं यदि नारदवचनं विभक्तविषयं स्यात् । संसृष्टविषयं तु तदिति तस्यैव पूर्वापरपर्यालोचनया स्पष्टमवगम्यते । स्मृतिच. II. p. 296.

1367. भर्तुर्धनहरी पत्नी तां विना दुहिता स्मृता । अङ्गादङ्गात्सम्भवति पुत्रवद् दुहिता नृणाम् । तस्मात्पितृधनं त्वन्यः कथं गृह्णीत मानवः । बृहस्पति q. by the मिता. on या. II. 135, स्मृतिच. II. p. 294, वि. र. p. 591.

mentators were not prepared to accept them in their literal sense. Viśvarūpa holds that Yāj. means only the putrikā and employs the plural in order to convey that several daughters may be appointed as sons. The Sm. C. II. p. 295 informs us that the same opinion was held by Dhāreśvara, Devasvāmin and Devarāta.[1368] The Mit. rightly refutes these views by saying that the word 'duhitaraḥ' in Yāj. cannot refer to 'putrikā', since Yāj., has himself stated the putrikā as equal to the aurasa son (in II. 128), as the putrikā is included among the sons by Vas. and as the widow and the daughters are declared by him as heirs in the absence of all the sons, principal and secondary. Yāj., Viṣṇu, Bṛ. are silent as to whether any discrimination was made between daughters as heirs. Kāt. (926) gives[1369] a preference to the unmarried daughter and the Mit. and the subsequent digests follow Kāt. The Dāyabhāga[1370] (XI. 2. 4 p. 175) quotes a prose passage of Parāśara preferring an unmarried daughter as an heir to a married daughter. Among married daughters the Mit., pressing into service a text of Gaut. on succession to strīdhana, holds by analogy that among married daughters the indigent (or unprovided for) one is to be preferred to one who is well-placed.[1371] Herein the Mit. follows common sense and the natural inclination of a father to feel more concern for a poor daughter. The Dāyabhāga prefers the unmarried daughter to the married daughter as is done by the Mit., but among married daughters Jīmūtavāhana, following an author called Dīkṣita, prefers one who has had a

1368. एवं सोपपत्तिकीं पत्न्यभावे दुहितृगामितां ब्रुवता बृहस्पतिनैव यद् दुहितृगामि धनमिति विधायकं वचनजातं तत्पुत्रिकाविषयमेव न पुनरपुत्रिकादुहितृविषयमिति धारेश्वर-देवस्वामिदेवरातमतं स्मृतितत्त्वाभिज्ञत्वाभिमानोन्मादकल्पितं निरस्तं वेदितव्यम् । स्मृतिच. II. p. 295.

1369. तदभावे तु दुहिता यद्यनूढा भवेत्तदा । कात्या. q. by मिता. on या II. 135, स्मृतिच. II. p. 296 (reads यद्यनूढाप्रतिष्ठिता), मद. पा. p. 672, परा. मा. III. p. 524.

1370. तत्र प्रथमं कन्यैवैका पितृधनहारिणी । यथा पराशरः । अपुत्रस्य मृतस्य कुमारी रिक्थं गृह्णीयात् तदभावे चोढा । ऊढापदं पूर्वोक्तविशेषपरम् । दायभाग XI. 2. 4 p. 175. Vide *Jamnabai v. Khimji* 14 Bom. 1, 13 (for preference of unmarried daughter).

1371. तथा प्रतिष्ठिताप्रतिष्ठितानां समवाये अप्रतिष्ठितैव तदभावे प्रतिष्ठिता । स्त्रीधनं दुहितृणामप्रत्तानामप्रतिष्ठितानां च—इति गौतमवचनस्य पितृधनेपि समानत्वात् । मिता. on या. II. 135. 'स्त्रीधनं ...... ष्ठितानां च' is गौ. 28. 22. प्रत्ता means 'given in marriage', अप्रतिष्ठिता means निर्धना acc. to the मिता., व्य. मयूख p. 141, व्य. प्र. p. 520.

son or who is likely to have a son to a widowed or barren daughter or to one who has given birth only to daughters. This preference is due to the principle of the Dāyabhāga[1372] that spiritual benefit is the governing factor in succession. The barren daughter or widowed daughter is unable to confer spiritual benefit on her father since she will have no son that will offer piṇḍas to the deceased owner (who will be the maternal grand-father). The Mit. on the other hand relies on nearness of blood (prattyāsatti) as the guiding principle. But, as pointed out by the V. P. p. 519, the Dāyabhāga is inconsistent. There is no reason on its own principle why the unmarried daughter should be preferred to a married daughter who has a son. The latter is then and there capable of conferring spiritual benefit while it is problematical whether the unmarried daughter will confer spiritual benefit (since she may after all be blessed with no son after marriage). Aparārka (p. 721) and V. R. (p. 517) give three meanings of the word 'apratiṣṭhitā' viz. 'childless, poor, widowed'. In deciding whether a particular married daughter is indigent as compared with another, the Courts refuse[1373] to go into nice or minute questions of the respective monetary positions of their husbands and prefer one to the other only if there is great disparity or marked difference between their positions.

According to all High Courts in India except that of Bombay a daughter's estate is similar to that of the widow. She takes only a limited interest, can only enjoy the usufruct of the property and cannot alienate it. On her death the estate passes not to her heirs, but to the next heir of her father. In Bombay,[1374] however, the daughter takes an absolute interest

1372. दुहितुरधिकारे सन्तानदर्शनं हेतुतया निगदितं सन्तानश्च पिण्डदोभिमतः, अपिण्डदस्याप्युपकारकत्वेन अन्यसन्तानादसन्तानाच्चाविशेषात् । दौहित्रश्च तत्पिण्डदाता ... । अतः पुत्रवती सम्भावितपुत्रा चाधिकारिणी । वन्ध्यात्व-विधवात्व-दुहितृप्रसूत्वादिना विपर्यस्तपुत्रा पुनरनधिकारिण्येवेति दीक्षितमतमादरणीयम् । दायभाग XI. 2. 1-3 p. 175. व्य. म. p. 518 quotes this and remarks, तेनैव प्रथमं कन्यैवैका पितृधनाधिकारिणीत्यनेन ग्रन्थेनाभिधानात् । तदानीं च पुत्रसम्भावनानिश्चयाभावात् । हेतुनिर्देशस्य प्रत्यासत्त्यतिशयमात्रप्रदर्शकतयाप्युपपत्तेः । व्य. म. p. 529.

1373, Vide *Totawa v. Basawa* 23 Bom. 229; *Manki v. Kundan* 47 All. 403.

1374. See *Bhagirthibai v. Kahnujirav* 11 Bom. 285 (F. B.); *Vithappa v. Savitri* 34 Bom. 510 (daughters take absolute estates in the Bombay Presidency).

in her father's estate when she succeeds as heir and on her death the estate will go to her own heirs.

A daughter is entitled to succeed, according to the decided cases, to her father's estate even if she be unchaste at the time of his death (except in cases governed by the Dāyabhāga).[1375] The reason assigned is that Kāt. and other smṛti writers do not expressly mention the requirement of chastity in the case of the daughter or mother as they do as regards the widow. According to the[1376] Dāyabhāga (XI. 2. 8) Bṛ. declares: 'a daughter equal in caste to the father and married to a husband of the same caste as her own, who is virtuous and intent on serving her husband, inherits her father's property'. Therefore a daughter who is unchaste cannot inherit. Further a daughter succeeds not because she is the daughter, but because she satisfies all conditions laid down by Bṛ. The Dāyabhāga (XI. 2. 31) further says that the word 'wife' (in XI. 1. 56) is merely illustrative and whatever restrictions are imposed on the wife apply to all women as heirs. The illegitimate daughter, even of a śūdra, has no right of inheritance to her father.[1377]

By virtue of local or family custom daughters have in some cases been held to be excluded from inheritance.[1378]

It may be noted that in his Vaijayantī (on Viṣṇu Dh. S. XVII. 5-6) Nandapaṇḍita appears to have preferred a daughter-in-law to a daughter; but he stands practically alone in this. Vide Jolly's T. L. L. p. 199 and p. 286 for quotation which however is not found in the D. C. Ms. No. 69 of the Vaijayantī. The daughter-in-law is not an heir at all in the whole of India,

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1375. Vide *Advyappa v. Rudrava* 4 Bom. 104 (where the original Smṛtis and digests are cited at length and discussed); *Kojiyadu v. Lakshmi* 5 Mad. 149, 156.

1376. तत्राह बृहस्पतिः । सदृशी सदृशेनोढा भर्तृशुश्रूषणे रता । कृताकृता वा पुत्रस्य पितुर्धनहरी तु सा ॥ ... सेति च पूर्ववचनोपात्ता दुहिता परामृश्यते । तदेवं सदृशी सदृशेनोढा इत्यादिविशेषणात् दुहितृमात्रतया पितृधनाधिकारितेति दर्शयति । ... यद्वा पत्नीत्युपलक्षणं स्त्रीमात्राधिकारेऽयमर्थो बोद्धव्य इति तात्पर्यम् । दायभाग XI. 2. 8, 13, 31. Vide *Ramanand v. Rai Kishori* 22 Cal. 347 for the exclusion of the unchaste daughter from inheritance.

1377. Vide *Bhikya v. Babu* 32 Bom. 562 (holds that the illegitimate daughter of a śūdra has no right of inheritance as against the son of the śūdra's brother).

1378. Vide *Bajrangi v. Manokarnika* 35 I. A. p. 1 (daughters held excluded by custom among Bhale Sultan Chhatris from Oudh).

except in Bombay (where she inherits as the widow of a *gotraja sapiṇḍa*). The Bālambhaṭṭī criticizes Nandapaṇḍita without naming him and holds that a daughter-in-law inherits only as a gotraja and not before a daughter.

Raghunandana in his comment on the Dāyabhāga makes the position about unchaste daughters quite clear[1379]. The smṛtis give preference among daughters to an unmarried daughter i. e. to a daughter who is a virgin (*kumārī*). It has been held by the Indian High Courts that though chastity is not required in the case of daughters to entitle them to inherit, yet in a competition between a married daughter and a daughter who was never married, but became a concubine or prostitute, the latter would be postponed to the former as the latter is not a virgin though unmarried. Some smṛtis like Parāśara[1380] employ the word *kumārī* in speaking of daughters' succession, while others employ the word '*kanyā*', but both words are synonymous. In *Govind v. Bhiku* 46 Bom. L. R. 699, where a man died leaving as heirs a married daughter and another daughter who never married, but was living as the permanent concubine of another man, it was held that the latter cannot inherit the property of her sonless father to the exclusion of or along with his married daughter. The old texts speak of only unmarried daughters and married daughters and prefer the former to the latter. Medhātithi on Manu IX. 132 says that *kanyā* means a girl who has had no sexual intercourse with any man. The Mit. makes three classes of daughters succeed one after another viz. (1) unmarried daughter, (2) indigent married daughter, (3) well-to-do married daughter. Judicial decisions have added a fourth variety viz. unmarried daughter who has become a prostitute. This fourth class being a new one must be placed after the other three classes expressly mentioned by the texts and commentaries on the basis of the maxim (intruders or uninvited persons must be seated at the end of or after those

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1379. पत्नीत्युपलक्षणमिति । अपुत्रा शयनं भर्तुः ... दायादा ऊर्ध्वमाप्नुयुः—इत्यादि कात्यायनवचनपरवचनपूर्वार्धे भर्तृधनहरी पत्नी या स्यादव्यभिचारिणी—इति पत्नीपदस्योपलक्षणं पूर्वत्र पक्षे तु एकत्र द्वयोः शास्त्रार्थ इति न्यायेन पत्न्यधिकारः, इह तु पत्नीपदेन लक्षणया दुहितृपत्न्योरपि ग्रहणमिति भेदः । रघुनन्दन on दायभाग XI. 2. 31. This is quoted in *Trailokya Nath v. Radha* 30 C. L. J. 235 (about mother) at p. 240.

1380. अपुत्रस्य कुमारी रिक्थं गृह्णीयात्तदभावे चोढा चेति पराशरवचनात्सर्वेषामत्र क्रम इति बालरूपः । वि. चि. p. 153 ; the बालम्भट्टी also quotes पराशर almost in the same words. Vide *Tara v. Krishna* 31 Bom. 495 (where the original authorities about the word 'kanyā' are exhaustively dealt with).

that are specially invited) noted by Śabara on Jai. V. 2. 19 and X. 5. 1 and by Śaṅkara on Vedāntasūtra IV. 3. 3 and employed by the V. Mayūkha (text p. 143) for settling the place of the paternal grandmother after the brother's son.

The daughter's son (*dauhitra*). On failure of daughters the daughter's son inherits. Gaut., Āp., Vas., are all silent about the daughter's son and so are Yāj. and Viṣṇu. But it has been plausibly urged by Viśvarūpa that, since[1381] Yāj. himself has (in II. 134) stated that the illegitimate son of a śūdra takes the whole estate if there be no legitimate son provided there exists no heir up to the daughter's son, the latter must have been intended to be an heir by Yāj. taking after the daughters. The Madanapārijāta (p. 672) relies on the word 'ca' in Yāj. to bring in the daughter's son. Though the printed text of Viṣṇu Dh. S. is silent about the daughter's son, the Mit., the Dāyabhāga and others quote a verse of Viṣṇu,[1382] 'when there is no continuance of lineage through sons and son's son the daughter's sons take the wealth (of the deceased owner); in offering śrāddha to the ancestors, daughter's sons are regarded as son's sons'. The V. Mayūkha (p. 142) includes a sūtra about the dauhitra in Viṣṇu Dh. S. Govindarāja, a commentator of Manu, is said by the Dāyabhāga, to have held, relying on this verse of Viṣṇu, that the daughter's son inherited the estate even before a married daughter of the deceased. But the Dāyabhāga did not approve of this view. The Dāyabhāga (XI. 2. 27) notes that Bālaka held that as the daughter's son was not expressly named by Yāj. he came in as an heir after all those that were expressly mentioned as heirs. Baud. Dh. S. II. 2. 17 distinguished[1383] between the putrikāputra and daughter but it is not clear whether Baud. intended to lay down that the dauhitra was an heir. In IX. 131-133 Manu expressly says that the *dauhitra*

1381. अभ्रातृकस्तु दुहितृतत्सुताभावे सर्वभाक् स्यादाज्ञाशुश्रूषया बृहस्पतिवचनाच्च— अनन्वयिनः सर्वं राजा हरेत्तच्छुश्रूषया चावरोधज इत्येके—इति। अस्मादेव च दौहित्राभाववचनाद् द्विजातीनामपि पुत्राभावे दौहित्रा धनभाज इति। अत एव च मातामहश्राद्धनियमोपपत्तिः। विश्वरूप on या. 'अभ्रातृको ... हरेत्'.

1382. तथा गोविन्दराजेनापि मनुटीकायाम्—अपुत्रपौत्रे संसारे दौहित्रा धनमाप्नुयुः। पूर्वेषां तु स्वधाकारे पौत्रा दौहित्रकाः समाः। एतद्विष्णुवचनबलेनोढातः प्रागेव दौहित्रस्याधिकारो दर्शितः। स चास्मभ्यं न रोचते। दायभाग IX. 23-24 p. 181. The मिता. reads 'अपुत्रपौत्रसन्ताने' and मताः for समाः.

1383. अभ्युपगम्य दुहितरि जातं पुत्रिकापुत्रमन्यं दौहित्रम्। बौ. ध. सू. II. 2. 17. The दायभाग XI. 2. 21 p. 181 quotes this and remarks, किं च स्मृतिषु दौहित्रपदम्-पुत्रिकाजातपरं नियतम्।

should inherit the entire wealth of a sonless man, that he should offer one piṇḍa to his father and another to the maternal grand-father and that in religious matters there is no difference between a son's son and a daughter's son, since their father and mother (respectively) spring from the body of the deceased owner. The context and the wording of these verses show, as held by Kullūka and other commentators, that the daughter's son here referred to is the son of the appointed daughter. But Manu IX. 136 is somewhat clearer. It says, 'through a son born to a daughter from a husband of the same class, whether she be appointed (as a son) or not, the maternal grand-father becomes one having a son's son; that son should offer piṇḍa and take the wealth of the maternal grandfather'. The Mit. takes the word 'akṛtā' in this verse as referring to the ordinary daughter, while Medhātithi and Kullūka hold that this verse also only refers to the son of the putrikā and that kṛtā means an appointed daughter with regard to whom an express agreement was made with her husband, while akṛtā means one (who is intended mentally to be appointed as a son) about whom there is no such express agreement. Bṛ. (S. B. E. 33 p. 379 verse 58) provides: 'just as (the daughter) gets ownership in her father's property (as an heir), though there may be other relatives, so her son also becomes the owner of his mother's and maternal grand-father's property'.[1384]

The daughter's sons inherit *per capita* and not *per stirpes*. Suppose that A has two daughters B and C, that B has three sons and C has two sons, that then both B and C die in A's lifetime; on A's death his estate will be divided into five parts, each daughter's son taking one fifth.

A daughter's son is really a bandhu and a *bhinnagotra sapiṇḍa*, but owing to historical causes and the high religious efficacy of the śrāddha offered by him he has been given a very high place among heirs by express texts.

Parents (pitarau). Great divergence prevails among medieval digests on the position of the father and the mother as heirs to their son. Yāj. gives no clue as to which among the parents is to be preferred if both are alive when their son dies. The text of the

1384. यथा पितृधने स्वाम्यं तस्याः सत्स्वपि बन्धुषु । तथैव तत्सुतोपीष्टे मातृमातामहे धने ॥ बृह. q. by दायभाग XI. 2. 17. p. 180, व्य. म. p. 521.

Viṣṇu Dh.[1385] S. as read by most digests places the father before the mother. Manu IX. 217 states that when the son dies issueless the mother takes his wealth, while Manu IX. 185 provides that the father takes the wealth of a sonless man and the brothers also. So Manu is not definite about the preference among parents. Kāt. (927) observes,[1386] 'of a sonless man (the heirs) are declared to be the wife of good family, the daughters, the father on failure of them, the mother, the brother and (the brother's) sons'. Bṛ. (S. B. E. 33 p. 379 v. 63) says,[1387] 'when a son dies without leaving his own wife or male issue, his mother is to be considered as her son's heir or a brother may succeed with the consent of the mother'. In this conflict it may be stated that the Mit., the Madanapārijāta, S. V. (p. 416), the V. C., the V. P. prefer the mother to the father; while the Dāyabhāga, the Sm. C., the Madanaratna, the V. Mayūkha prefer the father to the mother. Śrīkara[1388] held that both parents, if alive, succeed together. But the Dāyabhāga, Sm. C.

1385. The विष्णुधर्मसूत्र 17. 4-16 read: अपुत्रधनं पत्न्यभिगामि । तदभावे दुहितृगामि । तदभावे पितृगामि । तदभावे मातृगामि । तदभावे भ्रातृगामि । तदभावे भ्रातृपुत्रगामि । तदभावे बन्धुगामि । तदभावे सकुल्यगामि । तदभावे सहाध्यायिगामि । तदभावे ब्राह्मणधनवर्जं राजगामि । ब्राह्मणार्थो ब्राह्मणानाम् । वानप्रस्थधनमाचार्यो गृह्णीयाच्छिष्यो वा ।. These passages are cited as बृहद्विष्णु in the स्मृतिच., मदनरत्न (folio 100 b), व्य. प्र. and some other digests and as वृद्धविष्णु by the मिता., the परा. मा., व्यवहारसार (p. 252). The व्य. मयूख p. 142 and मदनरत्न add तदभावे दौहित्रगामि after दुहितृगामि. The वि. र. p. 595 and वि. चि. p. 151 reverse the order and read तदभावे मातृगामि तदभावे पितृगामि. But the व्य. प्र. p. 524 notes that such an order is found in no other work and so must be taken to be a mistake. Even the printed मिता. reads पितृगामि first. तस्मात्स्मृतिचन्द्रिका-मदनरत्नकार-कल्पतरु-रत्नाकर-पारिजातकारप्रभृतीनां बहूनां पितुरभावे मातुः पुत्रधनाधिकार इत्येव सिद्धान्तः । वाचस्पतिना तु तदभावे मातृगामि तदभावे पितृगामि—इति बृहद्विष्णुवचनं पठित्वा यथामिताक्षरमेव सिद्धान्तितम् । तत्तु कुत्रापि तदतिरिक्तग्रन्थे तथा पाठस्यालिखनाद् भ्रान्तिविलसितमेव । व्य. प्र. p. 524. It is, however, to be noted that in the printed वि. र. (p. 592) the father is placed after the mother (मातुरभावे पित्रादीनामधिकारस्य स्थितत्वात्). So it is probable that the text of the वि. र. was tampered with after the time of मित्रमिश्र.

1386. अपुत्रस्याथ कुलजा पत्नी दुहितरोपि वा । तदभावे पिता माता भ्राता पुत्राश्च कीर्तिताः ॥ कात्या. q. by मिता. on या. II. 135 (reads चार्यकुलजा), स्मृतिच. II. p. 299, परा. मा. III. p. 526, व्य. मयूख p. 141.

1387. भार्यासुतविहीनस्य तनयस्य मृतस्य तु । माता रिक्थहरी ज्ञेया भ्राता वा तदनुज्ञया ॥ बृह. q. by अपरार्क p. 744, स्मृतिच. II. 299, दायभाग XI. 3. 2 p. 186.

1388. अत एव श्रीकरेण पित्रोर्विभज्य धनग्रहणमुक्तं तदप्ययुक्तम् । पिता हरेदपुत्रस्य रिक्थं, स्वर्यातस्य ह्यपुत्रस्य माता दायमवाप्नुयात् इत्येताभ्यां ब्रीहियवयोर्निरपेक्षसाधनत्ववन्निरपेक्षस्वामित्वप्रतीतेः । स्मृतिच. II. p. 297.

and others criticise this view. The reasons why the Mit. prefers the mother before the father are three, out of which two are based on grammar. The word 'pitarau' in Yāj. is what is called an '*ekaśeṣa*' *dvandva* compound and in dissolving it or in the full-fledged dvandva the mother comes first in order and hence she should be preferred. Another reason is:[1389] A father may have several wives and sons from them all, so that a mother is directly related to her own son only and not to the other sons of her husband. So (the Mit. says) the mother has greater nearness (prattyāsatti) to her son than the father has. The Sm. C. (II. p. 297) refers to Jai. V. 1. 14 where the Vedic sentence 'sārasvatau bhavataḥ' is interpreted and it is stated that the first oblation is offered to Sarasvatī because the Yājyā and Anuvākyā verses as first set out are meant for Sarasvatī (and not on the ground of the method in which the *ekaśeṣa* is dissolved); therefore as to *pitarau* also no reliance should be placed on the dissolution of the compound. Nīlakaṇṭha in the V. Mayūkha denies the assumptions based upon grammar, says that Pāṇ. does not direct that in dissolving the compound the word mātā must be employed first and there is no authority for doing so.[1390] But the V. P. says that though Pāṇini may

1389. पिता सपत्नीपुत्रेष्वपि साधारणः । माता तु न साधारणीति प्रत्यासत्त्यतिशयोस्तीति विप्रलम्भसदृशमिदं न हि जननीजनकयोर्जन्यं प्रति सन्निकर्षतारतम्यमस्ति । स्मृतिच. II. p. 297.

1390. The general rule is that several words that would be in the same case when separately used may be compounded together to form a *dvandva*, when they are employed to convey the sense of 'ca', as said in 'cārthe dvandvaḥ' (Pāṇ. II. 2. 29). Such a compound is called dvandva and mātā-pitarau is an example of it. Another sūtra (I. 2. 64) of Pāṇini states that when words denoting several individuals of the same kind are to be compounded together, only one of them may be retained and that is called an ekaśeṣa compound, which is of two kinds, *sarūpa* (e. g. haṁsaśca haṁsaśca haṁsau) and *virūpa* (when the two words are of different genders). The latter kind of ekaśeṣa is of restricted use. In such a compound when a male and female are associated together only the word in the masculine gender remains or the word 'pitṛ' when compounded with mātṛ (vide Pāṇ. I. 2. 67 and I. 2. 70). Therefore we have two forms to denote the idea of parents viz. *mātāpitarau* or *pitarau*. In dissolving this compound (*pitarau*) we employ the phraseology 'mātā ca pitā ca' and in the word 'mātāpitarau' the word for mother comes first. Therefore among parents as heirs mother should come first. Vide pp. 242-244 of my notes to the V. Mayūkha (ed. of text) where both the Mit. passage and its criticism by the V. Mayūkha are explained at length. In *Balkrishna v. Lakshman* 14 Bom. 605 both the Mit. and Mayūkha's criticism thereof are set out (pp. 608-609).

contain no such direction, all grammatical works like the Kāśikā dissolve the compound as 'mātā ca pitā ca' and grammatical usage for centuries supports the argument that the word mātā comes first[1391]. The argument about the mother being nearer is quite specious. Looked at from the son (whose inheritance is in question), the mother and father are both equally proximate. The V. P. holds that according to the maxim that even a slight ground of difference leads one to determine (priority) the mother should be preferred to the father (since we dissolve the compound as *mātā ca pitā ca*). The V. P. (p. 525) further tries to get over the text of Viṣṇu (putting the father before the mother) by explaining that if the mother is most worthy as a *pativratā* and the father an ordinary man she should be preferred but if the father is more worthy than the mother he should be preferred. Hardly any one supports V. P. and the courts have not followed this. Owing to the difference of opinion among the digests on the question of the preference between parents as heirs, queer results follow. For example, in the province of Bombay itself the father is preferred as an heir to the mother in Gujerat, the island of Bombay and in Northern Konkan (because in these regions the V. Mayūkha has been held to be of paramount authority), while in the rest of the Bombay Presidency the mother is preferred to the father as an heir. The mother takes a limited interest as an heir which is the same as the interest taken by a widow as heir to her husband. The father would take an absolute interest. The word mother includes an adoptive mother; that is, if an adopted son dies leaving no son, widow, daughter or daughter's son, the adoptive mother would succeed[1392] to him as an heir (and even in preference to the adoptive father in those provinces where the Mit. is the supreme authority). In the case of a dvyāmuṣyāyaṇa adoption, if the son adopted in that form dies leaving only his adoptive mother and natural mother, it has been held that both the mothers take his estate

1391. विग्रहवाक्ये यद्यपि पूर्वनिपातनियमो नानुशासनसिद्धस्तथापि व्याख्यातृसम्प्रदायसिद्धोस्त्येव । न हि क्वापि पिता च माता च पितराविति विगृह्णन् दृश्यते । किं तु माता च पिता च पितराविस्येवेस्यणुरपि विशेषोऽध्यवसायकर इति न्यायेन तस्यापि विनिगमकता संभवतीत्यनेनाशयेन तथोक्तः संभवः । व्य. म. 525.

1392. Vide *Anandi v. Hari Suba* 33 Bom. 404 (where, in the case of a simple adopted son, the adoptive mother was preferred to the adoptive father).

as co-heiresses.[1393] It has further been held that if, after succeeding as adoptive mother to a dvyāmuṣyāyaṇa son, the adoptive mother again adopts a son, the latter does not deprive the natural mother of the half share taken by her as heir of the deceased dvyāmuṣyāyaṇa son.

The word 'mother' in the Mit. does not include a step-mother. The latter is not recognised as an heir of her step-son at all in the whole of India (except in Bombay) on account of the rule of the exclusion of women from inheritance[1394] except where texts expressly mention them as heirs and the property would go to the crown instead of to the step-mother, if the latter alone were left, but she would be entitled to maintenance. In Bombay the step-mother would inherit as the widow of a gotraja sapiṇḍa, but she is assigned a remote[1395] place among gotraja sapiṇḍas. If a widow remarries and then her son by her first husband dies without leaving a child, a widow, a daughter or daughter's son his remarried mother is allowed to inherit to him by the[1396] Bombay High Court, though if she inherited first as a mother and then remarried, she is held by the same court to forfeit the inheritance taken (on account of section 2 of the Hindu Widows' Remarriage Act of 1856).

The mother succeeding to her son takes only a limited estate i. e. she cannot alienate it except for legal necessity. If Vijñāneśvara's definition of strīdhana be literally interpreted even property inherited from a son would be strīdhana. There is a striking example in E. I. vol. XIV p. 83 (the Śrīraṅgam plates of Mummaḍi Nāyaka in śake 1280) where a mother inheriting a village granted to her son Parāśarabhaṭṭa made a gift of it to the god Raṅganātha at Śrīraṅgam.

1393. *Basappa v. Gurlingawa* 37 Bom. 74 (which holds that the adoptive mother and natural mother inherit equally). Vide *Kantawa v. Sangangowda* I. L. R. (1942) Bom. 303 for the effect of adoption by the adoptive mother on the estate taken by the natural mother from a dvyāmuṣyāyaṇa son.

1394. Vide *Rama Nand v. Surgiani* 16 All. 221; *Tahaldai v. Gaya Pershad* 37 Cal. 214; *Seethai v. Nachiar* 37 Mad. 286, all holding that the step-mother does not inherit to her step-son.

1395. Vide *Kesserbai v. Valab* 4 Bom, 188 at p. 208 (for holding that 'step-mother' is not included in the term 'mother' in the Mit., but that she would inherit as the widow of a gotraja sapiṇḍa and so as gotraja sapiṇḍa herself). In this case numerous authorities are examined at length.

1396. Vide *Basappa v. Rayava* 29 Bom. 91 (F. B.) for remarried mother inheriting to her son (by the first husband) dying after her remarriage.

Brothers (bhrātaraḥ) and *brother's sons.* Acc. to both Yāj. and Viṣṇu, on failure of the parents the brothers succeed and on failure of brothers, brother's sons inherit. There were apparently conflicting texts, Śaṅkha, Manu (IX. 185) and others giving the inheritance to the brothers even before the parents. All these are somehow reconciled and almost all digests from the Mit. downwards are agreed that brothers inherit after the parents. But again a conflict of views ensues. The Mit. says that among brothers, those of full blood inherit in preference to half brothers (i. e. sons of the same father but sprung from a different mother). It then says that on failure of both kinds of brothers, the inheritance goes to brother's sons; but even here the sons of full brothers are preferred to sons of half brothers. This view of the Mit. is shared by the Dāyabhāga and almost all eminent writers of digests except the author of the V. Mayūkha. The Mit. prefers the full brother to the half brother on the ground that the full brother has particles of the bodies of both the father and the mother of the deceased, while the half brother has only the particles of the father's body (the mother being different). Therefore the full brother is nearer than the half brother. The Dāyabhāga argues[1397] that the full brother offers piṇḍas to the same three paternal ancestors and the same three maternal ancestors to whom the deceased was bound to offer piṇḍas and is to be preferred to the half brother who offers piṇḍas to the three paternal ancestors of the deceased alone (but not to the maternal ancestors of the deceased). This view of spiritual benefit being the governing principle in preferring the full brother to the half brother is accepted by Aparārka (p. 745).[1398] The reasons of the V. Mayūkha for preferring even the full brother's son to the half brother are: the word 'brothers' principally stands for 'brothers of the whole blood' (*sodara*) and only secondarily for brothers of the half blood. The general rule of Mīmāṁsā[1399] is that the same word is

1397. सापत्नस्य च सोदरान्मृतदेयषाट्पौरुषिकपिण्डदातृसुतभोग्यमात्रपित्रादिपिण्ड-त्रयदातृतया जघन्यत्वात्। दायभाग XI. 5. 12.

1398. संप्रदानकारकीभूतानां पित्रादीनां त्रयाणां चोदकादिदाता यश्च तत्सन्तति-जोऽन्योपि तेषामेवोदकादिदाता स तस्य प्रत्यासन्नः सपिण्डः। तत्र तु सोदरो भ्राताऽतिशयेन प्रत्यासन्नः समानसंप्रदानोदकादिदातृत्वात्। अपरार्क p. 745.

1399. मुख्य एव विनियोक्तव्यो मन्त्रो न गौण इति। कुतः उभयाशक्यत्वात्। शबर on जै. III. 2. 1. Compare दायभाग III. 30 p. 67 (quoted on p. 606 *n.* 1145) and न ह्येकस्मिन्प्रकरणे एकस्मिंश्च वाक्ये एकः शब्दः सकृदुच्चारितो बहुभिः संबध्यमानः कश्चिन्मुख्यः कश्चिद्गौण इत्यध्यवसातुं शक्यम्। वैरूप्यप्रसङ्गात्। शारीरकभाष्य on ब्रह्मसूत्र II. 4. 3. Vide 6 Cal. 119, 126 (F. B.) quoted in 41 I. A. 290, 303-4 for this maxim.

not to be understood in the same sentence or rule as used in the primary and also in the secondary sense. Just as the word 'mother' applies only to the natural mother (and not to the step-mother), so bhrātaraḥ should not include both full and half brothers. The V. Mayūkha is however wrong. As pointed out by the Dāyabhāga, when Yāj. wants to speak of the full brother he employs the words '*sodara*' (Yāj. II. 138) and when he wants to refer to the half brother he employs the word '*anyodarya*' or '*anyamātṛja*' (Yāj. II. 139). Therefore the word 'bhrātaraḥ' applies to both full and half brothers in the primary sense. There are other smṛti texts such as that of the Smṛti-saṅgraha stating that brothers are of two kinds viz. those of full blood and those of half blood.[1400]

The Sm.[1401] C. II. 300 refutes the view of some that the word 'bhrātaraḥ' in Yāj. is an *ekaśeṣa dvandva* compound that it means 'brothers and sisters' according to Pāṇ. I. 2. 68' (*bhrātṛ-putrau svasṛ-duhitṛbhyām*) and that on failure of brothers sisters inherit. The V. Mayūkha[1402] also does not accept this interpretation of 'bhrātaraḥ' advanced by some, since there is no reason why 'bhrātaraḥ' should be taken as an *ekaśeṣa* of the *virūpa* kind (which is restricted only to rare cases) and not of the *sarūpa* kind. The Bālambhaṭṭi supports the wider interpretation of 'bhrātaraḥ' and at one time the Bombay High Court was inclined to accept this

1400. सोदर्याः सन्त्यसोदर्या भ्रातरो द्विविधा यदि । विद्यमानेऽप्यसोदर्ये सोदर्या एव भागिनः ॥ संग्रह q. by स्मृतिच II. p. 300, व्य. म. p. 527.

1401. यद्यपि भ्रातृपुत्रौ स्वसृदुहितृभ्यामिति शाब्दस्मृत्या पुत्रेभ्य इत्यत्र विरूपैकशेषं कृत्वा दुहितॄणामनुप्रवेशोऽत्र कर्तुं शक्यते तथापि पुमांसो दायादा न स्त्रियः—तस्मात्स्त्रियो निरिन्द्रिया अदायादीः—इति श्रुतेरित्येतेनेदं निरस्तं यत्कैश्चिदुक्तम् । स्मृतिच II. p. 300. पुत्रेभ्यः refers to Āp. Dh. S. II. 6. 14. 1. Bhrātaraḥ, if it means only brothers, would be an ekaśeṣa of the *sarūpa* kind, but if it means 'brothers and sisters', it will be an ekaśeṣa of the *virūpa* kind. The latter is to be resorted to only where there is a special reason to do so, as in the sentence 'bring two kukkuṭas, we shall make a pair of spouses' (and then kukkuṭau means a cock and a hen, while ordinarily it would mean 'two cocks'). कारणान्तरादेव हि कुक्कुटावानय मिथुनीकरिष्याम इत्येवमादौ विरूपैकशेषावगतिः । स्मृतिच. II. p. 300.

1402. केचित्तु भ्रातर इत्यत्र भ्रातृपुत्रौ स्वसृदुहितृभ्यामित्यनुशासनाद् भ्रातरश्च स्वसारश्च भ्रातर इति विरूपैकशेषेण भ्रात्रभावे भगिन्य इत्याहुस्तन्न । विरूपैकशेषे मानाभावात् । व्य. मयूख p. 142 ; भ्रातृपुत्रौ इत्येकशेषेण प्रागुक्तसिद्धान्तरीत्या पूर्वं भ्राता तदभावे स्वसा । बालम्भट्टी on व्यवहार p. 209.

interpretation.[1403] The above shows that some at least of the medieval and later Hindu jurists were more sympathetic and well disposed to the enlargement of the rights of women, though their views failed to secure general acceptance. It has been held that brothers by the same father (though by different mothers) are preferred to brothers by the same mother (though by different fathers), it being pointed out that "there is no provision in the Mitākṣarā or elsewhere for the sons born of the same mother after her remarriage being treated as brothers of the same womb for the purpose of inheritance so as to be included in the meaning of the word 'bhrātaraḥ' used in the texts."[1404] But Nandapaṇḍita expressly provides in his Vaijayantī the following order of succession among brothers and sisters of the whole and of the half blood: (1) brothers of the whole blood, (2) sisters of the whole blood, (3) brothers who are sons of the same father, (4) brothers who are sons of the same mother (vide Jolly T. L. L. pp. 208 and 287). Because Manu IX. 217 says that the wealth of a childless man is taken by the mother and that if the mother be dead, the father's mother would take it, the Sm. C. II. p. 299 places the paternal grand-mother before the brothers, but it stands almost alone in this and the Mit. observes[1405] that Manu does not lay down the order but only provides that the paternal grand-mother is an heir capable of inheriting. The V. P. (p. 527) expresses its dissatisfaction with this method of the Mit. whereby only Yāj. and Viṣṇu are deemed to lay down the order in which heirs

1403. *Sakharam v. Sitabai* 3 Bom. 353 at p. 359-368 (where the Mayūkha, Nandapaṇḍita and Bālambhaṭṭī on the interpretation of 'brothers' in Yāj. are referred to); but vide *Mulji v. Cursandas* 24 Bom. 563 and *Bhagwan v. Warubai* 32 Bom. 300 for the proposition that the interpretation of the Bālambhaṭṭī has not been accepted by the courts as authoritative so far as the districts governed by the Mit. are concerned.

1404. Vide *Ekoba v. Kashiram* 46 Bom. 716 at p. 718. In *Narayan v. Laxman* 51 Bom. 784 it was held that the sister of a prostitute is entitled to succeed to the prostitute's property as a sapiṇḍa before the property goes to the Crown by escheat, relying (at p. 793) on the analogy afforded by a passage from the Vaijayantī of Nandapaṇḍita on the Viṣṇudharmasūtra quoted in Dr. Jolly's T. L. L. on 'Partition &c.' pp. 208 and 287. तत्र प्रथमं समानमातापितृका भ्रातरो गृह्णीयुः । ... तदभावे समानमातापितृका भगिन्यो गृह्णीयुः । तदभावे तु तेपि (भिन्नोदराः) गृह्णीयुः । ... तत्रापि प्रथमं समानपितृकाः पश्चात्समानमातृका बीजस्य प्राधान्यात्प्रत्यासत्तेश्च क्रमनियामकत्वात् । वैजयन्ती.

1405. पितृर्माता धनं हरेदित्यस्य वचनस्य धनग्रहणाधिकारमात्रपरत्वादुत्कर्षे तत्सुतानन्तरं पितामही गृह्णातीत्यविरोधः । मिता. on या. II. 135.

take, while Manu, Śaṅkha and others are deemed to be only concerned with declaring the right of certain persons to inherit.

The V. Mayūkha proposes a special order of inheritance as follows:—(1) full brothers; (2) then full brother's sons; (3) the gotraja sapiṇḍas of whom the first is the paternal grandmother, (4) then the sister, (5) then the paternal grandfather and the half brother at the same time, (6) then the paternal great-grandfather, paternal uncle and the half brother's son together. It should be noted that this conjoint inheritance by heirs of different degrees of ascent and descent which is peculiar to the Mayūkha has been regarded by the Bombay High Court as unknown in practice and obsolete.[1406] Therefore it is probable that even in districts governed by the Mayūkha the order of heirs after the paternal grandmother and full sister would be half brother, then half sister and then half brother's son and then it will be the same both according to the Mit. and the Mayūkha.

The Mit. does not expressly mention the sister at all but the Bombay High Court has held her to be a very near heir even where the Mit. is paramount, placing her after the brothers (whether full or half), brother's sons (whether of the whole blood or half blood) and paternal grandmother, the difference from the Mayūkha being that under the latter the full sister comes only after the full brothers and full brother's sons and paternal grandmother and before half brothers and half brother's sons.

One passage of the Mayūkha, being wrongly translated by Borradaile, has led the courts (including the P. C.) to decide that full brothers succeed along with the sons of a deceased full brother wherever the Mayūkha is supreme. The passage of the Mayūkha as translated by Borradaile (vide Stokes H. L. Books p. 88, IV. 8. 17) runs "the sons of a brother also, if themselves fatherless, at the time of the paternal uncle's death, provided they are capable of understanding (the use of) property, will divide the father's share with their father's other brothers, after the example 'among grandsons by different fathers, the allotment of shares is according to the fathers'".

1406. Vide *Sakharam v. Sitabai* 3 Bom. 353 at p. 363; *Kessorbai v. Valab* 4 Bom. 188 at p. 208.

The text of the Mayūkha is given in the note below. It is[1407] almost the same as a passage of the Mitākṣarā, which has not been misunderstood. Both passages contemplate a case like this. A dies leaving B, C, D, his brothers, as his nearest heirs, so that A's estate vests in interest in B, C, D. Before the estate of A is actually divided by metes and bounds, B dies leaving three sons E, F, G. The last three had no right to the property of A at their uncle A's death because their father B was living at the time (i. e. *pitṛvyamaraṇakāle jīvatpitṛkatayā asañjāta-dhanasambandhāḥ*). Yet when the property is later on actually to be divided they (E, F, G) will take the share which their father B would have taken if the property of A had been divided at the moment of A's death. Here a distinction is drawn between vesting of property (*dhanasambandha*) and its actual partition. But, in order to entitle nephews to take by actual partition, their father should have survived the deceased. This is the real meaning.

The Privy[1408] Council, following a wrong translation, held that, under the law of the V. Mayūkha, brothers and the sons

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1407. भ्रातृपुत्रा अपि पितृव्यमरणकाले जीवत्पितृकतयासञ्जातधनसम्बन्धाश्चेत्-अनेकपितृकाणां तु पितृतो भागकल्पना—इति न्यायेन पित्र्यमंशं पितृव्यान्तरैः सह विभज्य गृह्णीयुः । व्य. मयूख p. 142 ; it appears that Borradaile read ०मरणकालेऽजीवत्पितृकतया and misunderstood असञ्जातधनसम्बन्धाः. Compare मिता. 'यदा त्वपुत्रे भ्रातरि स्वर्याते तद्भ्रातृणामविशेषेण धनसम्बन्धे जाते भ्रातृधनविभागात्प्रागेव यदि कश्चिद् भ्राता मृतस्तदा तत्पुत्राणां पितृतोऽधिकारे प्राप्ते तेषां भ्रातृणां च विभज्य धनग्रहणे पितृतो भागकल्पनेति युक्तम् ।'. Vide व्य. प्र. p. 528 for a passage similar to the Mit. The मदनरत्न (folio 101 a) and मद. पा. p. 672 have also a similar passage.

1408. Vide *Chandika v. Muna* L. R. 29 I. A. 70 where this rule was applied to Abhan Thakurs that had migrated from Gujerat to the United Provinces of Agra and Oudh before the V. Mayūkha was composed, on the ground that the Mayūkha only embodied and defined pre-existing customs. There was thus a double error. The Mayūkha was misunderstood and further the Mayūkha had nothing to do with Gujerat usages as it was composed by a Mahārāṣṭra brāhmaṇa whose family had migrated to Benares. It may be true to some extent as a general proposition that commentators and digest writers embody pre-existing customs of the districts where they wrote. But often times this is not so and varying statements of the law are due to individual opinions. For example, the Mayūkha provides for the simultaneous succession of the paternal great-grandfather, the paternal uncle and the half brother's son ; but the Bombay High Court has discarded this view of the Mayūkha. The Mayūkha places the father before the mother as an heir, but V. T. composed by Nīlakaṇṭha's own first cousin

(*Continued on the next page*)

of a brother that died *before* the propositus (the brother inheritance to whom is in question) shared the estate of the latter. This erroneous decision has been persisted in to this day on the principle of *stare decisis*. The view of the Vaijayantī about the sons of the same woman from different husbands being sapiṇḍas of each other has already been noted (p. 727). Govindarāja on Manu III. 11 says that it is wellknown that children of different fathers but of the same mother are spoken of as brother and sister. Kullūka on Manu III. 11 refers to this view of Govindarāja.[1409]

A question arises whether the distinction between full blood and half blood made by the Mit. in the case of brothers and nephews was to be carried beyond them. Though a Full Bench[1410] of the Bombay High Court held that the distinction was not to be carried beyond brothers and nephews and that paternal uncles of the half blood inherited along with paternal uncles of the full blood, the Privy Council overruled this decision and held that the preference of the whole blood to the half blood extends to all sapiṇḍas of the same degree from the common ancestor (and therefore a paternal uncle of the whole blood excludes one of the half blood). The Madanapārijāta[1411] p. 674 expressly extends the preference of the whole blood to paternal uncles.

(*Continued from the last page*)

places the mother before the father (folios 139-140). Following this case it was held in *Haridas v. Ranchordas* 5 Bom. L. R. 516 that the son of a predeceased brother inherited along with the brothers of the deceased. This rule is not to be carried beyond brothers and brothers' sons. In *Kesarlal v. Jagubhai* 49 Bom. 282 the differring translations of the Mayūkha were referred to (at. p. 286), it was held that the principle of *stare decisis* required that the Privy Council decision should be followed and the estate of a deceased brother was allowed to devolve on the sons of a brother that had died *before* the deceased along with the surviving brother.

1409. भिन्नपितृकयोरप्येकमातृकयोर्भ्रातृत्वप्रसिद्धेः । गोविन्दराज on मनु III. 11.

1410. Vide *Shankar v. Kashinath* 51 Bom. 194 (F. B.), where the relevant texts are discussed, over-ruled in *Mahant Garuddas v. Mahant Laldas* L. R. 60 I. A. 189.

1411. पितुरभावे भ्रातृणामिव पितामहस्याभावे पितृव्याणामपि सोदरभिन्नोदरव्यवस्था पूर्ववदेव । साक्षात्पितामहीपुत्राः प्रथमं धनभाजस्तदभावे सापत्नपितामहीपुत्राः । मद. पा. p. 674.

It is noteworthy that the Vīramitrodaya which generally follows the Mit. invokes the principle of spiritual benefit in preferring the full brother's son to the half brother's son.[1412]

The heirs from the wife to the brother's sons are spoken of as 'baddhakrama' (lit. whose order is fixed) in the Mit., the V. Mayūkha (p. 143) and other works and as 'the compact series (of heirs)' in the case law. For example, in rejecting the view of some that rely on Manu IX. 217 that the father's mother succeeds immediately after the mother, it is said that the heirs from the parents to the brother's son being mentioned in a fixed order (by Yāj.), no place can be found for the father's mother in the fixed series of heirs and that Manu IX. 187 indicates only this that the father's mother is an heir.[1413] The V. Mayūkha relies on the popular maxim that when certain persons are specially invited for a meeting or a dinner they are seated on seats definitely allotted to them but that those who come uninvited are assigned places at the end of the row of those who were specially invited.[1414]

The question arises whether the brother's son's son inherits immediately after the brother's son and before any other heir. There is a conflict among Sanskrit writers on this point. The Sm. C. II. p. 300,[1415] the Subodhinī, the Madanapārijāta (p. 673) say that the compact series ends with the brother's son, while Aparārka, Varadarāja (V. Nir. p. 453) and the Vaijayantī of Nandapaṇḍita hold that the brother's son's son comes immediate-

1412. युक्तं चैतत् । असोदरभ्रातृपुत्रो हि धनिनो मातरं विहाय स्वपितामहीविशिष्टस्य धनिपितुः पिण्डं ददातीति सोदरभ्रातृपुत्राज्जघन्यस्तदनन्तरमेवाधिकारीति । व्य. प्र. p. 528.

1413. मातर्यपि च वृत्तायां पितुर्माता धनं हरेदिति मात्रनन्तरं पितामह्या धनग्रहणे प्राप्ते पित्रादीनां भ्रातृसुतपर्यन्तानां बद्धक्रमत्वेन मध्येऽनुप्रवेशाभावात् । मिता. on या. II. 135; यद्यपीयं (पितामही) मातुरनन्तरं श्रुता तथापि बद्धक्रमभ्रातृपुत्रान्तेषु मध्ये निवेशायोगादागन्तूनामन्ते निवेश इतिवद् भ्रातृपुत्रान्ते निवेश्या । व्य. मयूख p. 143.

1414. For आगन्तूनामन्ते निवेशः, vide शबर on जै. X. 5. 1 'यथा समाजेषु समासेषु च ये आगन्तवो भवन्ति ते पूर्वोपविष्टाननुपमृद्यैव निविशन्ते एवमिहापि द्रष्टव्यम् ।'. Vide also शबर on जै. V. 2. 19, शारीरकभाष्य on वेदान्तसूत्र IV. 3. 3 and भामती 'आगन्तूनां निवेशोऽन्ते स्थानाभावात् प्रसाधितः'. In *Mohandas v. Krishnabai* 5 Bom. 597 this maxim is quoted and it is said that it applies only to the compact series of heirs and that it does not apply to the list of bandhus enumerated by Nilakaṇṭha (p. 602). The maxim is also relied on in *Govind Bhaushet v. Bhiku* 46 Bom. L. R. 699.

1415. गोत्रजा इति धनभाज इति शेषः । गोत्रजशब्दोऽत्र गोबलीवर्दन्यायात् पूर्वोक्तपितृभ्रातृतत्सुतव्यतिरिक्तपितामहसुतादिगोत्रजेषु वर्तते । Sm. C. II. p. 300; vide V. P. p. 528 for almost the same words.

ly after the brother's son. A Full Bench of the[1416] Bombay High Court holds, basing its decision on the usage of the province, that the compact series ends with the brother's son, while the Privy Council would seem to lend colour to the view that in the Benares school it ends with the brother's son's son. The Dāyabhāga (XI. 6. 6 p. 208) places the brother's son's son immediately after the brother's son on the ground of the superior efficacy of the piṇḍas offered by him.

Gotrajas (lit. 'those born in the same gotra' or agnates). Yāj. says that on failure of the heirs up to brother's sons the gotrajas succeed. Though one's father, brothers and brother's sons also are really gotrajas, they are expressly assigned certain fixed places in the order of heirs and other persons born in the gotra are included in the term gotrajas on the analogy of such an example as 'let the cattle be brought and also the bulls' where the bulls, though really included under 'cattle' (*gāvaḥ*), are separately mentioned in order to emphasize that special attention must be paid to them on account of their intractable nature. Vide p. 526 note 966 above. Acc. to the Mit. gotrajas are the father's mother (as the first among them), then other sapiṇḍas and samānodakas. The V. Mayūkha (p. 143) also says the same thing and places the father's mother as the first among gotraja sapiṇḍas. It may be remarked that Yāj. avoids the word sapiṇḍa and employs the word gotraja. The Mit. and Mayūkha state that sapiṇḍas succeed as heirs and that sapiṇḍas are of two kinds, viz. *gotrajas* (born in or having the same gotra as the *propositus*) and those that are born in (or are of) a different gotra. These latter (viz. *bhinnagotra sapiṇḍas*) are designated as *bandhus* by Yāj. Therefore it comes to this that, though Yāj. does not employ the word sapiṇḍa, the inheritance goes after the brother's son to the nearest sapiṇḍa. Yāj. knew the word 'sapiṇḍa' (I. 52) and defines the limits of sapiṇḍa relationship for marriage (in I. 53), from which it follows that he does not use the word sapiṇḍa in the sense given to the word by Jīmūtavāhana. In I. 68 Yāj. mentions both sapiṇḍa and sagotra (in the matter of *niyoga*) and thereby indicates two things viz. that the words were not synonymous and that sagotra had the same sense as gotraja.

1416. Vide *Appaji v. Mohanlal* 54 Bom 564 (F. B.), in which *Buddha Singh v. Laltu Singh* L. R. 42 I. A. 208 was distinguished on the ground that it was not an express decision on the question whether the compact series of heirs ended with the brother's son.

Āp. Dh. S. II. 6. 14. 2 provides[1417] that 'on failure of sons the nearest sapiṇḍa' (inherits). Manu[1418] IX. 187 is the classical text on this point, which appears to mean literally, 'whoever is nearest from among the sapiṇḍas, to him the estate (of the deceased) shall belong'. This verse has been variously explained by the commentators and digests and variously translated by eminent Judges and writers on Hindu Law. The chief difficulty lies in the expression 'sapiṇḍādyaḥ' and the words 'tasya tasya'. Some take the first as equal to two words 'sapiṇḍāt yaḥ' and others as one word 'sapiṇḍādyaḥ' (sapiṇḍa and the like). Some take one 'tasya' (of him) as referring to the deceased and the other to the inheritor; while others take 'tasya tasya' as both referring to the inheritor alone, corresponding to 'yaḥ' (one more 'yaḥ' being suppressed for the sake of metre). Though the printed text and most of the commentaries read the half verse of Manu as in the note below there are several digests that read it differently. For example, the Sm. C. II. p. 301 reads it as 'yo yo hyanantaraḥ piṇḍāt' and quotes Dhāreśvara's explanation that 'piṇḍāt' means 'sapiṇḍāt'. Kullūka and the Dāyatattva p. 195 explain 'sapiṇḍāt' as 'sapiṇḍamadhyāt' (from among sapiṇḍas) and this appears to be the best explanation. Br.[1419] (S. B. E. 33 p. 379 verse 62)

1417. पुत्राभावे यः प्रत्यासन्नः सपिण्डः । आप. ध. सू. II. 6. 14. 2.

1418. अनन्तरः सपिण्डाद्यस्तस्य तस्य धनं भवेत् । Manu IX. 187. Vide Bühler's note on this in S. B. E. vol. 25 pp. 366-368 for the varying interpretations of commentators. Bühler is not right when he emphatically says: "On philological grounds it seems to me improbable that 'anantaraḥ sapiṇḍāt' can mean anything else than 'nearest to the sapiṇḍa' and that this sapiṇḍa can be anybody else than the deceased". In the first place the singular 'sapiṇḍāt' can be easily interpreted as used in a generic sense (*jātāvekavacanam*) i. e. as meaning 'sapiṇḍebhyaḥ' (from among sapiṇḍas). In Āp., Br. and other works wherever inheritance is spoken of, it is the *inheritor* who is required to be the *sapiṇḍa* or *bāndhava* or *sakulya* and the deceased is hardly anywhere spoken of as the sapiṇḍa of the inheritor but rather as 'mṛta', 'svaryāta', 'dhanin' &c. The verse of Manu is variously read. अनन्तरः सपिण्डो यस्तस्य तस्य धनं भवेत् । व्यव नि. p. 451, मदनरत्न (folio 100 a); यो यो ह्यनन्तरः पिण्डात्तस्य तस्य धनं भवेत् । ... तदेतद् धारेश्वरो व्याचष्टे यो यो ह्यनन्तरः पिण्डादित्यत्र पिण्डात्सपिण्डादित्यर्थो द्रष्टव्यः । स्मृतिच. II. 301; व्यवहारसार p. 254 reads as यो यो as in स्मृतिच. 'अनन्तरः सपिण्डाद्य इत्यनेन यः सपिण्डात्संनिहितः तस्य सपिण्डसंनिहितस्य धनं सपिण्डस्य संनिहितस्य धनं भवेदिति विहितत्वात् । सुबोधिनी p. 71.

1419. बहवो ज्ञातयो यत्र सकुल्या बान्धवास्तथा । यस्त्वासन्नतरस्तेषां सोऽनपत्यधनं हरेत् ॥ बृह. q. by स्मृतिच II. p. 301, मदनरत्न (folio 101 a), परा. मा. III. p. 529, दायतत्त्व p. 195, व्य. प्र. p. 527. The स्मृतिच. and मदनरत्न explain: ज्ञातयः सपिण्डाः सकुल्याः समानोदकाः । बान्धवाः ... स्मृत्यन्तरे दर्शिताः आत्मपितृष्वसुः पुत्राः०'

says, 'when there are several *agnates*, *sakulyas* and *bāndhavas* (cognates), whosoever of them is the nearest shall take the wealth of him that dies without issue'.

The important question is: what is the meaning of the word 'sapiṇḍa'. The Mitākṣarā and the Dāyabhāga propound two different meanings of the word that have been explained at length in H. of Dh. vol. II, pp. 452–458 and 472–477. Therefore it is not necessary to repeat those explanations. The word 'sapiṇḍa' is employed by Pāṇini (IV. 1. 165) in connection with the technical definition of *gotra* (Pāṇ. IV. 1. 162) given by him. It appears to have been used in the sense of blood relationship as stated by the Kāśikā. According to the Mit. the right to inheritance depends upon blood relationship (connection through particles of the same body, *ekaśarīrāvayavānvaya*) and the preference among those who are blood relations is determined by nearness or propinquity (*pratyāsatti*). According to the Dāyabhāga, sapiṇḍa relationships is based on religious efficacy i. e. on the capacity to offer the cake or ball of rice in śrāddha and it has evolved a peculiar method of determining preference which will be explained immediately below. That there appears to have been a close connection between taking the wealth of the deceased and offering śrāddha to him may be admitted. But the question is whether a person was deemed to be an heir and entitled to take the estate of the deceased because he offered śrāddha to that person or whether the heirship was originally determined on other grounds and whoever took the estate was saddled with the responsibility of performing śrāddhas for the benefit of the soul of the deceased. It is difficult to give a convincing answer to this. It appears, however, that ancient sūtras do not emphasize the religious efficacy of piṇḍas as the determining principle in heirship. Āp., Manu, Bṛ. (particularly the first and last) speak only of nearness (which more naturally means 'nearness of blood'). Yāj. omits the word sapiṇḍa altogether in mentioning heirs. Manu IX. 142 states that piṇḍa follows the gotra and riktha (wealth). Viṣṇu Dh. S. XV. 40 declares, 'whoever inherits the estate (of the deceased) has to offer piṇḍa to him'. This rule is emphasized even by those works (like V. Mayūkha)[1420] that make blood relationship

1420. मृतस्य रिक्थग्राहिणा येन केनापि राजपर्यन्तेनौर्ध्वदेहिकं दशाहान्तं कार्यम् । तथा च विष्णुः । यश्चार्थहरः स पिण्डदायी स्मृतः—इति । व्य. मयूख p. 145; यो धनमावृणीत स तस्मै श्राद्धं कुर्यात्पिण्डं च त्रिपुरुषं दद्यात् । स्मृति q. by अपरार्क p. 746, मेधा. on मनु. IX. 132, वि. र. p. 599 and बालम्भट्टी II. p. 207 (asoribes to वृद्धशातातप). त्रयाणां तुल्योपकारित्वं च पार्वणविधिना पिण्डदानेन स्पष्टम् । व्य. म. 504.

the test of heirship by saying that whoever even including the king (who takes by escheat on failure of all heirs) that takes the estate of the deceased must perform or arrange for the performance of the funeral ceremonies of the deceased up to 10 days after death and the śrāddhas, as said by the Brahmapurāṇa 220. 79 (tadabhāve ca nṛpatiḥ kārayettvakuṭumbinām। tajjātīyair-naraiḥ samyak-dāhādyāḥ sakalāḥ kriyāḥ). The Mit. view is upheld by V. R., V. C., Par. M., Madanapārijāta, Sarasvatīvilāsa, V. Mayūkha, Bālambhaṭṭī and many other works. The theory of the Dāyabhāga is propounded by only a few medieval works and writers like Aparārka (quoted above on p. 725), Raghunandana, Nandapaṇḍita. The Vīramitrodaya generally follows the Mit. but in certain cases it relies on or refers to the principle of religious efficacy in preferring one heir to another, as for example, in preferring the full brother to the step-brother (compare note 1397 and V. P. p. 528) or in preferring three male descendants to the widow. It is therefore that the Privy Council remark,[1421] 'now it is absolutely clear that under the Mitākṣarā while the right of inheritance arises from blood relationship or community of blood, in judging of the nearness of blood relationship or propinquity among the gotrajas the test to be applied to discover the preferential heir is the capacity to offer oblations'. Its position is peculiar.[1422] It says that the capacity to offer piṇḍas is not the governing principle as to heirship, but it is only useful in finding out the preferential heir among gotrajas.

Viṣṇu quoted by the Mit. (not found in the printed Dharmasūtra) prescribes : 'If there be no son or grandson left for continuing the line, the daughter's sons shall take the wealth, for in regard to the obsequies of ancestors daughter's sons are regarded as son's sons'. This is in line with Manu IX. 136 (cited above on p. 720) which says that the daughter's son should offer the piṇḍa and take the wealth. Therefore it appears that Manu, Viṣṇu and others relied upon the capacity for the offering of piṇḍa as the reason for being entitled as heir, but that this idea was vague and not elaborated in any way. The idea that blood relationship settled the right to inheritance is implicit in the order of heirs in Yāj. Yāj. (II. 127) in speaking of the kṣetraja son says that he inherits the wealth of both (the

1421. Vide *Buddha Singh v. Laltu Singh* 42 I. A. 208 at p. 227.

1422. नहि पिण्डदानाधिकार एव दायग्रहणे प्रयोजकः, ज्येष्ठे सति कनीयसामनधिकारेपि दायग्रहणात्। ... गोत्रजादीनां दायहराणामनेकेषां समवाये पिण्डदानाद्युपकारित्वं धनस्वामिनो यत्तद्बहूपकारित्वव्यावर्तकपरं न तु तदेव प्रयोजकम्। व्य. प्र. p. 461.

begetter and the husband of the wife on whom he is begotten) *and* offers piṇḍa to both. He *does not* state that because he offers piṇḍa to both he inherits the wealth. So this verse also favours the view that offering of piṇḍa was a duty laid upon him who took the wealth (except in the case of male issue). Hence it appears that the theory of the Mit. also has a very respectable antiquity and further it has been followed by most medieval writers throughout India (except in Bengal).

The argument of the Dāyabhāga (which was propounded before it by a writer probably named Udyota[1423]) that the taking of a deceased person's estate depends upon the spiritual benefit conferred on him is briefly as follows. It relies principally on Baud. Dh. S. and Manu. In the section on the partition of wealth (which begins from IX. 103) Manu (IX. 137) declares the super-eminent spiritual benefits conferred by the son, grandson and great-grandson; further (in IX. 106) Manu states that the son gets all wealth from his father because he frees the latter from debt, that (in IX. 139) the daughter's son also is spoken of as saving the grandfather in the next world and as therefore entitled to the grandfather's wealth, that the verse immediately preceding Manu IX. 187 (declaring that the nearest amongst sapiṇḍas inherits) speaks of the offering of piṇḍa to three ancestors; and since it is reasonable to presume that the blind and the like are excluded from inheritance (Manu IX. 201) because they are incapable of performing religious rites, it follows that Manu and others regarded the taking of wealth as dependent on the conferring of spiritual benefit. This point of view the Dāyabhāga emphasizes at every step. It[1424] says: "There are two purposes for which wealth is acquired, viz. for worldly enjoyment and for the unseen or spiritual benefit derived from making gifts and the like; but when the acquirer is dead, he cannot have enjoyment of the wealth and the only purpose that remains is the unseen purpose or benefit. It is therefore that Bṛ. says, 'from the wealth inherited, the inheritor should carefully set apart half for the benefit of the deceased for defraying the expenses of the

1423. उपकारकत्वेनैव धनसम्बन्धो न्यायप्राप्तो मन्वादीनामभिमत इति मन्यते । इति निरवद्यविद्योद्योतेन द्योतितोऽयमर्थो विद्वद्भिरादरणीयः । दायभाग XI. 6. 31-32 p. 216.

1424. धनार्जनस्य हि प्रयोजनद्वयं भोगार्थत्वं दानाद्यदृष्टार्थत्वं च । तत्रार्जकस्य तु मृतत्वाद्धने भोग्यत्वाभावेनादृष्टार्थत्वमेव शिष्टम् । अत एव बृहस्पतिः । सकुल्यकाद् धनादर्धं तदर्थं स्थापयेत् पृथक् । मासषाण्मासिके श्राद्धे वार्षिके च प्रयत्नतः ॥ दायभाग XI. 6. 13. The verse of बृह. is q. by वि. र. p. 595, व्यव. नि. p. 447, विवादचन्द्र p. 81.

monthly, six-monthly and annual śrāddhas". The subject of śrāddhas will be dealt with in another volume. But here it is necessary to say a few words for making the position of the Dāyabhāga clear. Among the several kinds of śrāddhas two deserve notice, viz. *Ekoddiṣṭa* and *Pārvaṇa.*[1425] The first (*ekoddiṣṭa*) is performed for the benefit of a single deceased person. There are sixteen such śrāddhas performed for the benefit of the deceased during the course of one year after his death or on the 11th day of death. And every year on the anniversary of death an ekoddiṣṭa śrāddha may be performed for a deceased person. The pārvaṇa śrāddha is performed on certain specified days, such as the *amāvāsyā* of a month, or particularly in the dark half or on the *amāvāsyā* of Bhādrapada or on a *saṅkrānti.* In this śrāddha the three deceased paternal ancestors of the performer are principally invoked and the three deceased paternal ancestors of his mother are also invoked but their invocation is secondary and is dependent on the principal invocation. There is one more word that must be explained here viz. *sapiṇḍana* or *sapiṇḍīkaraṇa.* This is a śrāddha rite performed one year after the death of a person or on the 12th day from his death. By this śrāddha the person recently deceased ceases to be a *preta* (a departed spirit) and is elevated to the rank of *pitṛs* (Manes). The widow and daughter can perform only the ekoddiṣṭa śrāddha, while sons, grandsons and great-grandsons can perform the pārvaṇa śrāddha also. The Dāyabhāga refers (XI. 1. 34 p. 162) to the fact that the three male descendants, by performing the pārvaṇa śrāddha, confer great spiritual benefit on the owner (compare note 1342 above). Elsewhere (XI. 7. 17 p. 211) it designates the pārvaṇa as 'traipuruṣika' (i. e. performed for the benefit of three ancestors). When speaking of the right of the widow to inherit it emphasizes (XI. 1. 43 p. 165), by quoting verses from Vyāsa,[1426] that

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1425. 'एकः उद्दिष्टः यस्मिन् श्राद्धे तदेकोद्दिष्टमिति कर्मनामधेयम्' मिता. on या. I. 251; तत्र त्रिपुरुषोद्देशेन यत्क्रियते तत्पार्वणम्। एकपुरुषोद्देशेन क्रियमाणमेकोद्दिष्टम्। मिता. on या I. 217. पार्वण means 'performed on a *parvan* day.' Acc. to the विष्णुपुराण III. 11. 118 the parvan days are, अमावास्या, पौर्णिमा, चतुर्दशी, अष्टमी and रविसंक्रान्ति. भविष्यपुराण q. in श्राद्धतत्त्व p. 192 defines the पार्वणश्राद्ध as 'अमावास्यां यत्क्रियते तत्पार्वणमुदाहृतम्। क्रियते वा पर्वणि यत्तत्पार्वणमिति स्मृतिः'.

1426. तदाह व्यासः। मृते भर्तरि साध्वी स्त्री ब्रह्मचर्यव्रते स्थिता। स्नाता प्रतिदिनं दद्यात्स्वभर्त्रे सलिलाञ्जलीन्॥...लोकान्तरस्थं भर्तारमात्मानं च वरानने। तारयत्युभयं नारी नित्यं धर्मपरायणा॥ तदेवमादिभिर्वचनैः पत्न्या अपि नरकनिस्तारकत्वश्रुतेः धनहीनतया चाकार्यं कुर्वती पुण्यापुण्यफलसमत्वेन भर्तारमपि पातयतीति तदर्थं तद्धनं पूर्वस्वाम्यर्थमेव भवतीति युक्तं पत्न्याः स्वाम्यम्। दायभाग XI. 1. 43–44 p. 165. This is quoted in व्य. प्र. p. 509.

a widow by leading a chaste life, by offering water mixed with sesame every day to her deceased husband, by making gifts and observing fasts saves himself and her husband in the next world. It adds that if the widow misbehaves she makes her husband fall, as husband and wife share in the fruits of each other's good and evil deeds. Therefore the widow takes her husband's wealth for his benefit. Bṛhan-Manu (q. by the Dāyabhāga XI. 1. 7 and by the Mit.) declares that a sonless chaste widow should offer piṇḍa to her husband and take his entire estate. Similarly Prajāpati (cited above on p. 709 and quoted by even the V. Mayūkha and other works of the Mitākṣarā school) requires the widow who inherits all the movable and immovable property of her deceased husband to perform the monthly, six-monthly and annual śrāddhas of her husband.[1427] Similarly the Dāyabhāga allows the unmarried daughter or a married daughter having a son (or who is likely to have a son) to inherit because her son will offer piṇḍa to the owner who will be the maternal grand-father. It prefers the daughter's son[1428] as an heir even to the father because the former offers a piṇḍa to the owner himself, while the father offers piṇḍas to two of the three paternal ancestors to whom the owner would have been bound to offer piṇḍas. The D. B. winds up by saying[1429] that the order of inheritors must be followed in such a way that the wealth of the deceased may be most beneficial to (the soul of) the deceased. In certain respects the D. B. does not strictly and logically follow its own theory but is compelled to twist it by reason of the places assigned by special

1427. On आदाय दापयेच्छ्राद्धं मासषाण्मासिकाब्दिकम् (vide n. 1358 above), वि. र. p. 590 says: केचित्स्त्रिया पार्वणमत्याहुस्तन्निषेधाय श्राद्धानि परिगणयति मास-षाण्मासिकाब्दिकमिति । ... ... आदिशब्देन एकादशसपिण्डनपरपक्षकर्तव्यक्षयाहश्राद्धानि गृह्यन्ते । अतो नान्यत्कुर्यात् ।'.

1428. पिण्डदानमेव च द्वयोरेकं निमित्तमनुवदति बृहस्पतिः । यथा पितृधने स्वाम्यं तस्याः सत्स्वपि बन्धुषु । तथैव तत्सुतोपीष्टे मातृमातामहे धने । यथा येन दौहित्रदेयपिण्डेन दुहिता पितृधनाधिकारिणी तथैव तेनैव पिण्डदानेन दुहितृसुतोपि मातामहधने स्वामी सत्स्वपि पित्रादिषु । दायभाग XI. 2. 17 p. 180.

1429. तस्माद्यथा यथा मृतधनस्य तदुपयुक्तत्वं भवति तथा तथाधिकारक्रमोनुसरणीयः । ... एवं च सर्वत्रोक्तरीत्या मृतधनस्य मृतार्थत्वमनुसन्धेयमुक्तक्रमेण । दायभाग XI. 6. 28 and 30 p. 215. The last sentence is quoted by the दायतत्त्व p. 197.

texts to certain heirs.[1430] For example, the order of heirs according to the D. B. is; son, grandson and great grandson; widow; daughter; daughter's son: father; mother; full brother; half brother; full brother's son; half brother's son. But the persons entitled to perform the śrāddha of the deceased in order are somewhat different. In fact the order of succession does not strictly follow in any school the order of those that are called *śrāddhādhikārins.* The order of those who are entitled to offer śrāddha to a deceased separated male (*śrāddhādhikārin*) given in most works is as follows; son (aurasa or adopted); grandson; great-grandson; widow; married daughter; unmarried daughter who has succeeded to the deceased's wealth; daughter's son who succeeds to the wealth; full brother; half brother (son of a different mother); full brother's son; half brother's son; father; mother; daughter-in-law; full sister; half sister; full sister's son; half sister's son; paternal uncle; paternal uncle's son; other gotraja sapiṇḍas; sodaka; any gotraja; cognates such as maternal grandfather, maternal uncle, maternal uncle's son (i. e. the bandhus of the three kinds in order); pupil; son-in-law; father-in-law; friend; any brāhmaṇa who takes a brāhmaṇa's wealth or king who takes by escheat. Vide Nirṇayasindhu III uttarārdha pp. 382–386, Dharmasindhu III uttarārdha pp. 368–369, Śrāddhaviveka p. 48. If the principle of the capacity to offer or of the offering of piṇḍas regulating the right to succeed is to be strictly and logically followed, there is no reason why the mother or the paternal grandmother should succeed immediately after the father or the paternal grandfather respectively. Her recognition in the D. B. school is due to the fact she is expressly mentioned in Manu as an heir. Similarly in the rules about the succession to re-united coparceners, the school of D. B. gives preference to re-united co-parceners and does not apply the theory of spiritual benefit. Further the Dāyatattva says that all that is required is the capacity

1430. Vide *Akshaya Chandra v. Haridas* 35 Cal. 721 at p. 726 and *Nalinaksha v. Rajanikanta* 58 Cal. 1392 for the propositions that the doctrine of spiritual benefit cannot be applied consistently in all cases such as the succession of females to males, the succession of samānodakas &c. and that in cases not contemplated by Jimūtavāhana or his followers in the Bengal school, the principle of propinquity and of natural love and affection should be followed. The Dāyatattva p. 195 after quoting Bṛ. cited above observes that both the superiority of piṇḍas offered and nearness of line are to be considered in inheritance, 'पिण्डदानसम्बन्धतारतम्येन आसन्नजननतार-तम्येन च धनेष्वधिकारी'.

to receive piṇḍa or the capacity to participate in the piṇḍas offered by others and not the actual offering of piṇḍas. For example, if a man performs śrāddha for his ancestors, then dies, but no one performs his sapiṇḍana and therefore he does not participate in the piṇḍas given to his ancestors, still his wealth will be inherited on the principle of religious efficacy.[1431] Owing to considerations of space it is not possible to go into great detail about the several propositions established in relation to the theory of religious benefit as the determining factor in matters of inheritance. But the following propositions may be set out in one place:

(1) Benefits are conferred on the deceased by means of the *ekoddiṣṭa* or the *pārvaṇa śrāddha*. The capacity to perform the pārvaṇa śrāddha is not the sole ground on which rests the right to inheritance to a man. Therefore the widow, the daughter and the pupil were recognized as heirs though they perform only the ekoddiṣṭa śrāddha. But those who are competent to perferm the pārvaṇa śrāddha have a preferable claim to those who are entitled to perform only the ekoddiṣṭa śrāddha. Therefore the male issue of a deceased person are preferred to a widow or daughter.

(2) Spiritual benefit is conferred on a man by presenting piṇḍa directly to him or by offering piṇḍa to one or more of his paternal ancestors to whom he presents piṇḍas during his own life time and with whom he participates in piṇḍas offered after his death by others or by offering a piṇḍa to one or more of his maternal ancestors (mother's father, mother's father's father and the latter's father) to whom he was bound to offer piṇḍas during his life (but with whom he does not participate in the piṇḍa offered to them[1432]).

(3) The piṇḍa offered to a man himself directly is of greater efficacy than the piṇḍa offered to a paternal ancestor in which he participates after his own death as one of the Manes. Therefore the son, grandson or great-grandson is preferred to every one else. The brother offers a piṇḍa to the father and two more

1431. अथ यः खलु पिण्डान् दत्त्वैव मृतः परतश्चासंस्कृतपितृभावः स कथं सपिण्डः, एकपिण्डदातृत्वभोक्तृत्वलक्षणसम्बन्धाभावादिति चेत्तद्योग्यतयेति ब्रूमः । योग्यताप्रयोजकं च सामान्यशास्त्रविषयत्वम् । शुद्धितत्त्व p. 397.

1432. यश्च जीवन् यत्पिण्डदाता स मृतः सपिण्डनात् तत्पिण्डभोक्ता । एवं च सति मध्यस्थितः पुरुषः पूर्वेषां जीवन् पिण्डदाता स मृतः सन् सपिण्डनात् तत्पिण्डभोक्ता च । दायभाग XI. 1. 38 p. 163, शुद्धितत्त्व p. 396.

paternal ancestors of the deceased in which he (the deceased owner) only participates after his death. Therefore the brother is postponed to the son or daughter's son (who offers a piṇḍa directly to the deceased himself as his maternal grandfather).

(4) The piṇḍas offered to paternal ancestors have greater efficacy than those offered to maternal ancestors (hence a brother's son is preferred to a sister's son because the former offers piṇḍas to his own and the owner's paternal ancestors, while the latter offers piṇḍas to his maternal ancestors who are the paternal ancestors of the owner).

(5) The piṇḍa offered to the owner's father is of greater efficacy than that offered to the paternal grandfather or great-grandfather. Therefore a brother's son or grandson is preferred to a paternal uncle.[1433] Hence it should follow that all agnatic and cognatic descendants of the father of the deceased would be preferred to any descendant of the paternal grandfather or great-grandfather.

(6) Where the number of piṇḍas offered by two claimants is the same, he who offers a piṇḍa to the nearer ancestor is to be preferred.

The Dāyabhāga, strarting with Baud. Dh. S. (I. 5. 113 ff), Manu (IX. 186–187) and the Matsyapurāṇa elaborates its own definition in the following[1434] way. A man's son and a daughter are both born in the family. The daughter's son springs from the family of his maternal grandfather but he belongs to another gotra (viz. his own father's gotra); similarly, a man's sister (i. e. father's daughter) is born in his family but her son, though mediately sprung from the deceased owner's family, belongs to another gotra (viz. that of the sister's husband): the same is true of a father's sister's son and the paternal grand-father's sister's son. A sister's son offers a piṇḍa to the father

1433. पितृव्यो हि धनिनः पितामहप्रपितामहयोः पिण्डदः भ्रातुः पुत्रस्तु धनिनः प्रधानं पितरमेवादाय पुरुषत्रयस्य पिण्डदातेति स एव बलवानिति पितृव्यात्पूर्वमधिक्रियते । अत एव भ्रातृनप्तापि पितृव्यस्य बाधकः मृतधनिकस्य पितुः प्रधानस्यैव पिण्डदातृत्वात् । दायभाग XI. 6. 5–6.

1434. तस्माद्यो यस्तत्कुलोत्पन्नोऽतद्गोत्रोऽपि स्वदौहित्रपितृदौहित्रादिस्तत्कुलोत्पन्नो मातुलादिर्धनिनो मृतस्य पितृमातृकुलगतत्रैपुरुषिकपिण्डदातृतया एकपिण्डसम्बन्धेन सपिण्ड तस्य तस्याप्यधिकारार्थं त्रयाणामिति वचनं, आनन्तर्येण च विशेषार्थमनन्तर इति वचनं वर्णनीयम् । तेन मृतभोग्यमृतदेयपित्रादित्रयपिण्डदातुः पितृदौहित्रादेरभावे मृतदेयमातामहादिपिण्डदातॄणां मातुलादीनामानन्तर्यक्रमेणाधिकारो बोद्धव्यः । दायभाग XI. 6. 19–20 p. 212. त्रयाणामुदकं कार्यं is Manu IX. 186 and अनन्तरः सपिण्डाद्यः is Manu IX. 187.

of the deceased, as the owner's father is the former's maternal grandfather and therefore he is connected as sapiṇḍa with the owner. A father's sister's son offers a piṇḍa to the paternal grandfather of the owner, who (paternal grandfather) is the maternal grandfather of the father's sister's son. A maternal uncle is not sprung even mediately from the family of the owner, but he offers a piṇḍa to his own father who is the maternal grandfather of the deceased owner. Therefore the maternal uncle or his son or son's son being connected with a piṇḍa that is offered to the maternal grandfather or maternal great-grandfather respectively of the deceased owner is a sapiṇḍa of the deceased owner. A maternal aunt's son also offers a piṇḍa to his mother's father, who is also the owner's mother's father and so the maternal aunt's son is a sapiṇḍa of the owner. The piṇḍas offered to the maternal ancestors by him are inferior and secondary. Further, one's own mother, the father's mother, father's father's mother were associated with their respective husbands as to the piṇḍas offered to the male ancestors and the same holds good about the wives of the maternal ancestors also.[1435]

The result of this way of defining a sapiṇḍa is to obliterate the distinction between a *gotraja* and a *bandhu*. Yāj. (II. 136) expressly says that a bandhu can succeed only on failure of all gotrajas and so according to him a bandhu is one who is not a gotraja. The Dāyabhāga brings in the sister's son immediately after the the brother's son's son and before the paternal grandfather (i. e. even before a near agnatic ancestor) who is literally a *gotraja*, while the sister's son is literally not a *gotraja*. When the Dāyabhāga designates one's sister's son as sprung from the *kula* of the owner though not of the same gotra, he does violence to popular usage prevalent throughout India. An ordinary person in India hardly ever says that his sister's son or father's sister's son is born in his own *kula*. The Dāyabhāga only quibbles over the word ' gotraja ' in Yāj. which it reads in the singular (gotrajaḥ) and not in the plural (gotrajāḥ) as the Mit. does. Under the Mit. the sister's son is only a bandhu and cannot succeed before a paternal uncle or his son or a paternal grand-uncle or any other gotraja. The Dāyabhāga thus gives the go-by to the text of Yāj. and shuffles in several

1435. मात्रादिशब्दानां स्वजननी-पितृजननी-पितामहजननीष्वेव मुख्यत्वात्तैरेव च पत्युः श्राद्धेऽनुप्रवेशात्। यथा—स्वेन भर्त्रा सह श्राद्धं माता भुङ्क्ते स्वधामयम्। पितामही च स्वेनैव स्वेनैव प्रपितामही। सपत्निमात्रादीनां च पार्वणश्राद्धानुप्रवेशो निषिद्ध एव। दायभाग XI. 6, 3 p. 207.

cognates as very near heirs. The D. B. regards Manu IX. 186–187 as the crucial text and Yāj. II. 135–36 as only secondary.

The following diagrams will illustrate the working of the theory of religious efficacy. A person is a sapiṇḍa of those to whom he is bound to offer a piṇḍa while he is alive, of those who on his death are bound to offer piṇḍa to him (viz. his three male descendants, his daughter's son, his son's daughter's son and his son's son's daughter's son) and of those who are bound to offer a piṇḍa to the ancestors to whom he is bound to offer a piṇḍa viz. to his three paternal ancestors and his three maternal ancestors and all of these are his sapiṇḍas. The last of these three groups has four sub-groups :—sub-group No. 1 comprises those who offer piṇḍas to their own paternal ancestors who are also the paternal ancestors of the owner: sub-group II contains those who offer piṇḍas to their three maternal ancestors who are all or some of them the paternal ancestors of the owner, to whom he was bound to offer a piṇḍa; sub-group III comprises those who offer piṇḍas to their paternal ancestors all or some of whom are the maternal ancestors of the owner; sub-group IV exhibits those who offer piṇḍas to their own maternal ancestors who are also the maternal ancestors of the owner. Each of these sub-groups contains 9 persons (as the minimum) who are all shown in thick type. If the owner has several brothers, sisters, uncles and aunts &c. the number of possible sapiṇḍas will be much larger. All heirs in the three sub-groups II–IV will be bandhus according to the Mitākṣarā and will be postponed to gotrajas under the Mitākṣarā. It should be noticed that Jīmūtavāhana brought in the father's daughter's son immediately after the father's great-grandson, the paternal grandfather's daughter's son after the paternal grandfather's great-grandson and the paternal great-grandfather's daughter's son immediately after that ancestor's great-grandson on the analogy of the rights of the owner's daughter's son and on the basis of Manu IX. 139 that the *dauhitra* (daughter's son) saves an ancestor in the next world just as a son's son does.[1436]

1436. किं तु पितुरपि प्रपौत्रपर्यन्ताभावे पितृदौहित्रस्याधिकारो बोद्धव्यो धनिदौहित्रस्येव । एवं पितामहप्रपितामहसन्ततेरपि दौहित्रान्तायाः पिण्डप्रत्यासत्तिक्रमेणाधिकारो बोद्धव्यः । दौहित्रोऽपि ह्यमुत्रैनं सन्तारयति पौत्रवदिति हेतोरविशेषात् । स्वदौहित्रवत्पित्रादिदौहित्रस्यापि तद्भोग्यपिण्डदानेन सन्तारकत्वात् । दायभाग XI. 6. 8–9 pp. 208–209. In *Huri Das v. Rama Churn* 15 Cal. 780 at p. 796 these *placita* were considered and it was held that they are not to be extended to the brother's

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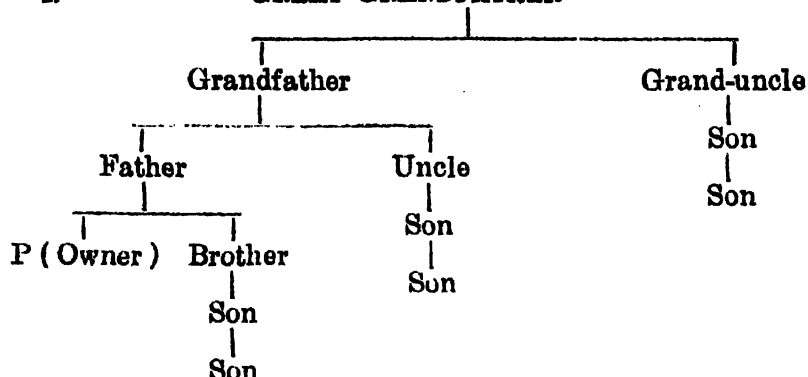
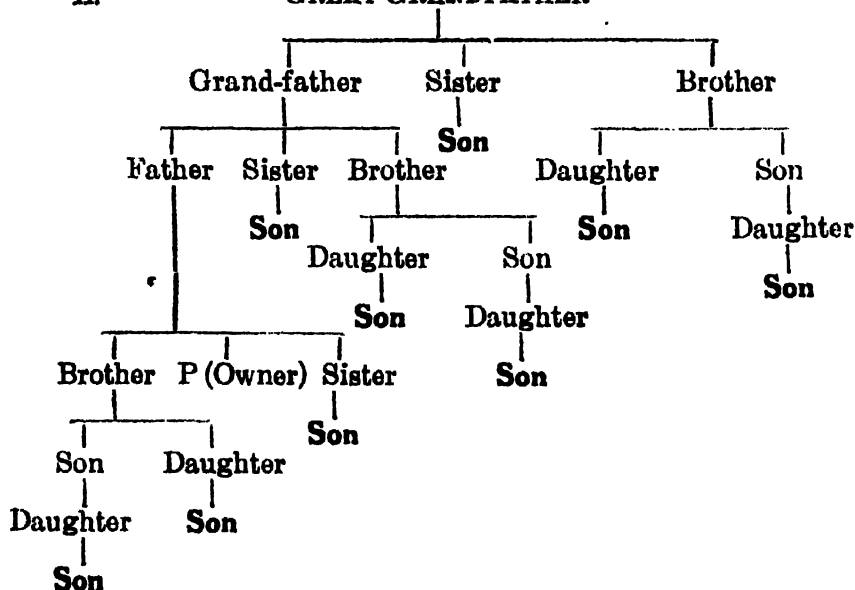
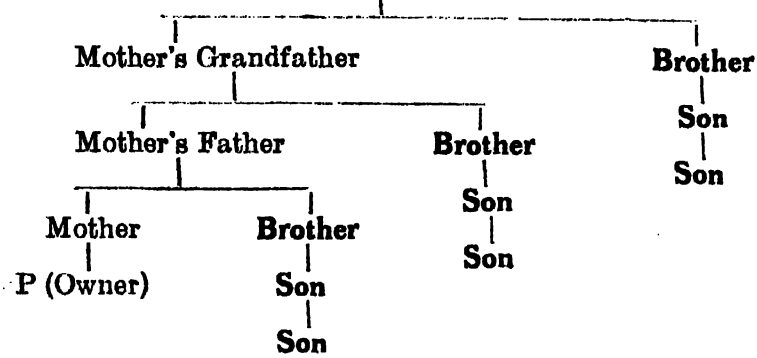
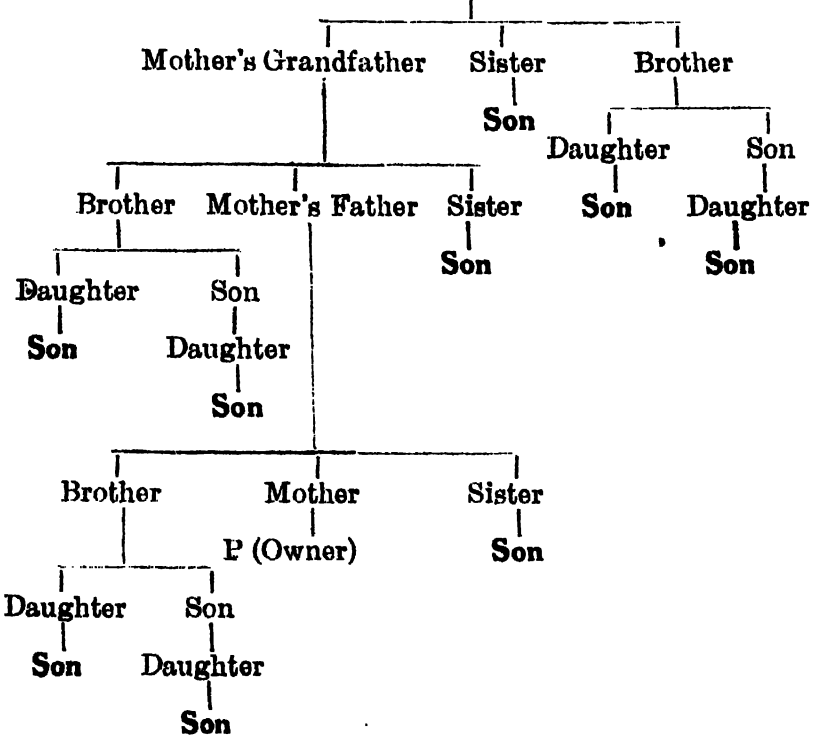

(*Continued from the last page*)

daughter's son and that the latter though a sapiṇḍa of the owner and an heir was not to be preferred to the great-grand son of the paternal grandfather of the propositus. Sarvadhikari (T. L. L. on Inheritance, 2nd ed. of 1922 pp. 701-702) criticizes this decision as wrong, but it does not appear that the Calcutta High Court is prepared to follow him. A similar conflict arises as to several cognate heirs. For example, the son's daughter's son and the son's son's daughter's son offer piṇḍas to the owner himself directly as a maternal ancestor (just as the daughter's son does) and therefore should be placed immediately after the daughter's son as heirs. But the Calcutta High Court would refuse to do so if the reasoning in 15 Cal. 780 be followed. Sarvadhikari (p. 709) however would place them immediately after the daughter's son.

The D. B. says[1437] that the word 'gotrajaḥ' (mas. singular) is employed by Yāj. for excluding all sapiṇḍa women (except

1437. याज्ञवल्क्येन च पित्रादिदौहित्रस्यापि तद्गोत्रजातस्य पिण्डदानानन्तर्यक्रमेणाधिकारप्रतिपत्त्यर्थं गोत्रजपदं कृतं सपिण्डस्त्रीणां च व्युदासार्थं तासामतद्गोत्रजातत्वात् । ... ... प्रपितामहसन्तानस्य दौहित्रान्तस्य मृतभोग्यपिण्डदातुरभावे मृतदेयमातामहादिपिण्डदानेन पिण्डानन्तर्यात् मातुलादिग्रहणार्थं बन्धुपदं प्रयुक्तवान् याज्ञवल्क्यः । मनुना तु पिण्डदानानन्तर्यवचनेनैव दर्शितम् । ... तस्मात् तद्भोग्यपिण्डदातुरभावे तद्देयपिण्डदातुर्मातुलादेरधिकारो न्याय्य एव । दायभाग XI. 6. 10, 12, 13. दायतत्त्व p. 196 has a similar passage.

those that are expressly named as heirs by special texts), since they are not born or (even mediately) sprung from the family of the owner, as the sister's son or the father's sister's son that is held by it to be so sprung, that the word '*bandhu*' is employed by Yāj. to include a maternal uncle and the like among heritable sapiṇḍas, since they are not sprung even mediately from the *kula* of the owner and are also not of the same gotra, that the maternal uncle and the like come in only after all descendants in the lines of the paternal ancestors inclusive of the great-grandfather up to the latter's daughter's son are exhausted,[1438] and that Manu had not to enter into these details as its two verses (IX. 186-187) were quite enough to lead to all that has been elaborated by the D. B. about the working of the theory of religious efficacy.

It will have been noticed that no female except the five expressly mentioned can inherit under the Dāyabhāga scheme and the result is that a man's own son's daughter or daughter's daughter does not take as heir, whereas a distant-relative like the father's father's sister's son takes it. The same is also the case even under the Mitākṣarā in the whole of India (except in Bombay and to some extent in Madras for which see a little later on).

A man offers only the leavings or remnants of the piṇḍas that stick to his hand (when offering piṇḍas to his three paternal ancestors) and that (leavings) are cast on kuśa grass to three paternal ancestors above the paternal great-grandfather (Manu III. 216). So also the three male descendants beyond the great-grandson offer the leavings (called *piṇḍalepa*) to the owner; these three remote paternal ancestors and the three remote male descendants (spoken of as 'vibhaktadāyāda in Baud. Dh. S. I. 5. 114) are designated *sakulya* by Baud., and

1438. Vide *Kailasha Chandra v. Karuna Nath* 18 C. W. N. 477 where the above passages are considered at length and it is held that the paternal grand-uncle's daughter's son (though not expressly mentioned by the D. B.) is entitled to preference over the maternal uncle (who is expressly mentioned as an heir and a sapiṇḍa by D. B.), since the former offers a piṇḍa to the paternal great-grandfather of the owner to whom the owner was bound to offer a piṇḍa in which the owner participates after his own death, while the latter offers a piṇḍa to the maternal grandfather of the owner to whom the owner was bound to offer a piṇḍa in which, however, the owner did not participate after his death.

the D. B.[1439] (XI. 1. 38). According to D. B. sakulyas succeed after all sapiṇḍas are exhausted. Just as a man participates after his death in the piṇḍas offered to his paternal ancestors so he would participate in the leavings also offered to his paternal ancestors from the 4th to 6th by their descendants (from 4th to 6th). The D. B. remarks that this difference between sapiṇḍas and sakulyas is made only in the matter of inheritance. But in the matter of the periods of mourning both the sapiṇḍas (strictly so called in the section on inheritance) and the sakulyas are designated sapiṇḍas by Manu (V. 60) and by the Mārkaṇḍeya-purāṇa (28. 4).[1440] According to Manu IX. 187 *sakulyas* succeed on failure of sapiṇḍas, while Viṣṇu Dh. S. (XVII. 9–11) prescribes[1441] that on failure of bandhus, sakulyas succeed. It appears that Viṣṇu employs the word bandhu in the sense of sapiṇḍa. Nār. (dāyabhāga, 51) states that on failure of daughters and sakulyas, bāndhavas and persons of the same caste succeed. Here it appears that sakulya and bāndhava are employed in the sense of gotraja and bāndhava as done in Yāj. The Bālambhaṭṭī says that *gotraja* and *sakulya* are synonymous. The Dāyabhāga appears to be somewhat inconsistent in its references to sakulyas. In XI. 6. 15 and 23 it includes samānodakas among sakulyas, while in XI. 6. 21–22 it defines sakulya as stated above. The Mit. on the other hand comprehends the sakulyas of the D. B. (as defined in XI. 6. 21) under its gotraja sapiṇḍas.

1439. विभक्तदायाद्यान् सकुल्यानाचक्षते । ...... सपिण्डाभावे सकुल्यः । बौ. ध. सू. I. 5. 114–116; एतेन वृद्धप्रपितामहप्रभृतयस्त्रयः पूर्वपुरुषाः प्रतिप्रणमुश्च प्रभृत्यधस्तनास्त्रयः पुरुषाः एकपिण्डभोक्तृत्वाभावाद् विभक्तदायाद्याः सकुल्या इत्याचक्षते । दायभाग XI. 1. 38 p. 163; तत्रापि प्रतिप्रणप्त्रादेरानन्तर्यं पिण्डलेपद्वारेण तेषामुपकारकत्वात् तदभावे च वृद्धप्रपितामहसन्ततिः मृतदेयपिण्डलेपभोगिभ्यो वृद्धप्रपितामहादिभ्यः पिण्डदातृत्वात् । एवंविध-सकुल्याभावे च समानोदकाः सकुल्यपदेनैवोपात्ता मन्तव्याः । दायभाग XI. 6. 22–23 p. 213.

1440. पिण्डलेपभुजश्चान्ये पितामहात्पितामहात् । प्रभृत्युक्तास्त्रयस्तेषां यजमानश्च सप्तमः । इत्येवं मुनिभिः प्रोक्तः सम्बन्धः साप्तपौरुषः ॥ मार्कण्डेयपुराण 28. 4–5 quoted by दायभाग XI. 1. 41. The ब्रह्मपुराण (220. 85–86) reads 'लेपसम्बन्धिनश्चान्ये पितामह ... साप्तपौरुषः'.

1441. तदभावे भ्रातृपुत्रगामि । तदभावे बन्धुगामि । तदभावे सकुल्यगामि । विष्णुधर्मसूत्र 17. 9–11. This is the reading of अपरार्क p. 741, वि. र. p. 595. The व्य. प्र. p. 530 says that in Viṣṇu bandhu and sakulya stand for sapiṇḍa and sagotra. Some works like दायतत्त्व (p. 189), दायभाग (XI. 1. 5, p. 151), व्य. मयूख p. 142 read 'तदभावे सकुल्यगामि तदभावे बन्धुगामि'. तत्र च पितृसन्तानाभावे पितामही पितामहः पितृव्यास्तत्पुत्राश्च क्रमेण धनभाजः । पितामहसन्तानाभावे प्रपितामही प्रपितामहस्तत्पुत्रास्तत्सूनवश्चेत्येवमासप्तमात्समानगोत्राणां सपिण्डानां धनग्रहणं वेदितव्यम् । मिता. on या. II. 136.

The Mit. states that the gotrajas are the paternal grandmother, the sapiṇḍas and samānodakas of the deceased. It then proceeds to say that the paternal grandmother is the first among *gotrajas*, then comes paternal grandfather. It paraphrases the word gotraja (born in the gotra) as *samānagotra* (having the same gotra) and then proceeds, ' on failure of the father's line (*santāna*) the heirs are the paternal grandmother, the paternal grandfather, the paternal uncles and their sons in order; on failure of the paternal grandfather's line the paternal great-grandmother, the paternal great-grandfather, his sons and son's sons inherit. In this manner must be understood the succession of sapiṇḍas belonging to the same gotra (as the deceased) up to the 7th degree'. According to the Mit. sapiṇḍa relationship extends up to the 7th degree (reckoned from and inclusive of the owner). Therefore the owner's sapiṇḍas for purposes of inheritance according to the Mit. are the owner's (1) 6 male descendants in the male line, (2) 6 male ascendants in the male line and the wives of the first three of them (that are expressly so declared, viz. mother, paternal grandmother and paternal great-grandmother) and probably the wives of the next three also; (3) the six male descendants of *each* of his six male ascendants in the collateral male lines. Besides, a man's wife and daughter are treated as his sapiṇḍas and the daughter's son, though a *bhinnagotra sapiṇḍa*, is placed high among the gotraja sapiṇḍa heirs.

Even under the Mitākṣarā in the whole of India (except in the Bombay and Madras schools), no women succeed as gotraja sapiṇḍas (except five expressly named and cited above on p. 713). In Bombay the sister (full or half) is brought in as a gotraja by the V. Mayūkha (though the Mitākṣarā is entirely silent) and placed by it immediately after the paternal grandmother. It relies on the general words of Manu IX. 187 and of Bṛ. (quoted above on p. 733) that to the nearest person in blood the inheritance goes and then proceeds:[1442] ' She is also a gotraja as being born in the gotra in which her brother (the deceased owner) was born. She is, however, not a *sagotra* (of the deceased brother), but being a sagotra is not mentioned here (in Yāj.) as the condition that leads on to the taking of the wealth of the deceased'. Here the V. Mayūkha plays upon the word *gotraja* and takes its literal meaning. But that is a specious argument. The

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1442. तदभावे भगिनी। ... तस्या अपि भ्रातृगोत्र उत्पन्नत्वेन गोत्रजत्वाविशेषात्। सगोत्रता परं नास्ति। न च सात्र धनग्रहणप्रयोजकत्वेनोक्ता। व्य. मयूख p. 143.

widow and mother are not gotrajas (in this sense of being born in the gotra) but on marriage they enter the gotra of their husbands and become sagotra. Further, on the same reasoning, a son's daughter, brother's daughter, father's sister and other women born in the family of the deceased will become his gotrajas (though not sagotras because on marriage they pass into the gotra of their husbands). But these other women are not expressly recognised even by the V. Mayūkha as gotrajas. Even though she was not mentioned in the Mit. the sister has been recognised as a gotraja sapiṇḍa by the Bombay High Court in parts of the Bombay Presidency where the Mit. is the paramount authority. The order of heirs under the Mit. would be as follows:—Full brother, half brother, full brother's son, half brother's son, paternal grandmother, sister (full being preferred to half), paternal grandfather. According to the V. Mayūkha the order is slightly different, viz. full brothers along with sons of full brothers that are dead, full brother's son, grandmother, full sister, halfbrother, halfsister, paternal grandfather. The unmarried sister had been recognized as entitled to a share when brothers came to a partition and they had to provide for her marriage expenses. Vide above pp. 619–620 and Nār.[1443] (dāyabhāga, 13), Viṣṇu Dh. S. 18. 35, Manu IX. 118, Yāj. II. 124. In Madras the sister had been recognized as a bandhu. The Legislature has intervened and laid down (Hindu Law of Inheritance Amendment Act II of 1929) that in territories governed by the law of the Mitākṣarā and in respect of the property of males not held in coparcenary and not disposed by will, a son's daughter, daughter's daughter, sister and sister's son shall be entitled to rank as heirs in the order specified in the Act next after a father's father and before a father's brother. The first three of these were before this Act not at all recognized as heirs in the whole of India except in Bombay (where the sister was recognised as a gotraja sapiṇḍa and the first two as bandhus) and except in Madras (where the first three were recognized only as bandhus). The sister's son was given a very high place as a sapiṇḍa under the Dāyabhāga and was treated as a bandhu elsewhere in India. This enactment does not affect the Dāyabhāga scheme and so the three females mentioned in the Act are not heirs even now under the Dāyabhāga. The sister's place as settled by Bombay decisions is after the paternal

1443. ज्येष्ठायांशोऽधिको देयः कनिष्ठायावरः स्मृतः । समांशभाजः शेषाः स्युरप्रत्ता भगिनी तथा ॥ नारद (दायभाग 13).

grandmother and before the paternal grandfather, while the above Act places her after the paternal grandfather. In *Bai Mahalaxmi v. The Deputy Nazir* 45 Bom. L. R. 434 it has for this reason been held that the Act does not apply to the Bombay Province. If it be held that the Act does apply to Bombay (except as to the sister), then the same Act will have to be deemed to be laying down two different orders of succession as to the same four heirs in different provinces, which, to say the least, is not a reasonable or desirable way of interpreting statutes (just as in the case of texts).

Some difficulty is caused by the use of the word *santāna* in the Mit. as regards the father's, grandfather's and great-grandfather's line. It has been seen above (p. 731) that the compact series ends with the brother's son (father's son's son i. e. after two descendants of the father) according to the Bombay High Court, while elsewhere in India it is supposed to end with the brother's son's son (i. e. after three descendants of the father). The Mit. expressly mentions only two descendants in the grandfather's and great-grandfather's line. The general rule is that sapiṇḍa relationship extends to six descendants of each line (excluding the man or ancestor from whom the counting is made). The further general rule gathered from the meagre words of the Mit. is that the nearer line excludes the more remote (e. g. the grandfather, his son and grandson are expressly mentioned by the Mit. as taking before the great-grandfather, his son and grandson). The question is whether the 3rd, 4th, 5th and 6th descendants of a nearer line would exclude even the 1st or 2nd descendant of a remoter line e. g. whether the great-grandson of the grandfather would take before the son or grandson of the great-grand-father or whether the 6th descendant of the grandfather would take before the son of the great-grandfather. There were three views[1444] on this point.

1444. Vide *Buddha Singh v. Laltu Singh* L. R. 42 I. A. 208 pp. 220-24 for the three views and their expounders. The P. C. overruled the first view and held (p. 227) that the descendants in each ascending line up to the fixed limit should be exhausted at any rate to the third degree before making the ascent to the next line in order of succession. गोत्रजशब्देनैव भ्रातृतत्सुतयोर्निर्देशे गम्यमानेपि पृथक् तयोरभिधानस्य गोत्रजेषु पितामहादिषु तस्य तस्य सन्ततौ पितुस्सन्ताविव द्वयोरेव पुत्रपौत्रयोर्धनभागित्वज्ञापनार्थत्वात्। स्मृतिच. II. p. 300. In Sm. C. II. p. 300 the passage as printed is somewhat corrupt. The Subodhini also says 'पितुस्सन्तानो भ्रातृतत्सुतपर्यन्तः' p. 74; vide मद. पा. p. 674 also for the same view.

The first view, relying upon certain words of the Sm. C., held that after two descents in each line, one should ascend into a remoter line and after the two descendants of that line are exhausted, one should revert to the 3rd to 6th descendants of a nearer line. The 2nd view was that in each line three generations were to be first exhausted, because the word *putra* in several places in the Mit. includes the three male descendants. The 3rd view[1445] was that in each line *six* descendants were to be exhausted before ascending to the next remoter line (as sapiṇḍa relationship extended to six degrees).

Another question is whether the widows of agnatic relations (such as the son's widow, brother's widow, step-mother or paternal uncle's widow) are included in the term 'gotrajāḥ' for purposes of inheritance. Under the Dāyabhāga, as well as under the Mitākṣarā throughout India (except in the Bombay School), the widows of gotraja sapiṇḍas are not heirs at all, since according to almost all writers women do not inherit except when expressly mentioned by texts. In the Bombay School the position is different. According to both the Mit. and the Mayūkha, wives enter by marriage the gotra of their husbands and become sapiṇḍas of their husbands. The Bālambhaṭṭī declared the son's widow to be an heir even before the paternal grandmother and includes females also in the word *gotrajāḥ*. When *gotraja* was rendered as *samānagotra*, the term became wide enough not only to include those born in the gotra but even those who entered the gotra by marriage. Besides, it was argued that if the paternal grandmother or paternal great-grandmother succeeded as a gotraja there was no reason why other widows of other gotrajas should not succeed. From the earliest days of British rule the gotraja sapiṇḍas (such as the son's, brother's, paternal uncle's widows) have been recognized as heirs in the Bombay Presidency. They take only a limited estate like the owner's widow or mother or

1445. The third view was propounded by Telang J. in *Rachava v. Kalingappa* 16 Bom. 716, which is referred to by the P. C. in 42 I. A. 208, at pp. 220 and 226. The P. C. do not dissent from Telang J. but do not expressly approve of his views as it was not necessary to do so in that case, where the question was whether the great-grandson of the grandfather of the deceased was to be preferred to the grandson of the great-grandfather and it was held by the P. C. that he was to be preferred. The 2nd view appears to be supported by the words of Aparārka p. 745 'एवं भ्राता तत्पुत्रस्तत्पौत्र इति पितृसन्ततौ त्रयः प्रत्यासन्नाः सपिण्डाः । एवं पितामहसन्ततौ प्रपितामहसन्ततौ च । एषामभावे पित्रादित्रयस्य ये प्रपौत्रास्तेषां पुत्रादित्रयं सापिण्ड्याद्धनग्राहकम् ।'

paternal grandmother. They are recognized rather on the ground of 'positive acceptance and usage' by the Privy Council than on the ground of any texts[1446]. They occupy the same place as their husbands, succeed after the compact series, the sister and half-sister and only after all the male gotraja sapiṇḍas (up to the 7th degree inclusive of the ancestor) properly belonging to the line to which their husbands belonged; e. g. the son's widow would succeed before the brother's son's[1447] son, the brother's widow or step-mother would succeed after all the six male descendants of the husband's father, but before the father's father, paternal uncle or his son &c. These widows of gotraja sapiṇḍas succeed before any bandhu. Since Act XVIII of 1937 a man's own widow, his predeceased son's widow and the widow of a predeceased son's predeceased son succeed along with his son or sons throughout India.

Samānodakas. According to the Mit. gotrajas are either sapiṇḍas or samānodakas. The word 'samānodaka' has a technical meaning. Acc. to Manu V.60, 'the sapiṇḍa relationship ceases with the seventh person; the relationship of samānodaka[1448] ends when birth (in the family) and name are no longer known'. This occurs in the chapter on impurity. The Mit. declares that the samānodakas comprise males seven generations beyond the sapiṇḍas or all males (beyond sapiṇḍas) whose birth (in the same family as that of the deceased) and name are known. It quotes a text of Bṛhan-Manu, 'the sapiṇḍa relationship ceases with the seventh person; the relation of

1446. Vide *Lallubhai v. Mankuvarbai* 2 Bom. 388, 447, which went up to the Privy Council as *Lallubhoy v. Cassibai* L. R. 7 I. A. 212 at p. 237. In *Gandhi Maganlal v. Bai Jadab* 24 Bom. 192 (F. B.) at p. 212 it was observed: 'The grandmother's claim was indeed found so strong that it served to help the widows of collateral sapiṇḍas to be also recognized as gotraja sapiṇḍas'.

1447. Vide *Appaji v. Mohanlal* 54 Bom. 564 (F. B.) for the daughter-in-law being preferred to a brother's grandson; *Kashibai v. oreshvar* 35 Bom. 389 (where the paternal uncle's grandson wae preferred to a paternal uncle's widow because he was a male gotraja sapiṇḍa of the same line within seven degrees, to which the widow's husband belonged); *Basangavda v. Basangavda* 39 Bom. 87 where the brother's widow was preferred to the paternal uncle's son (as she belonged to a nearer line).

1448. सपिण्डता तु पुरुषे सप्तमे विनिवर्तते । समानोदकभावस्तु जन्मनाम्नोरवेदने ॥ मनु V. 60 ; यथाह बृहन्मनुः । सपिण्ड ... वर्तते । समानोदकभावस्तु निवर्तेता चतुर्दशात् । जन्मनाम्नोः स्मृतेरेके तत्परं गोत्रमुच्यते । मिता. on या. II. 136. These verses are attributed to बृहस्पति by व्य. नि. p. 454

samānodaka ceases after the 14th; according to some it extends as far as the memory of name and family (or birth) reach; the gotra is said to extend up to that'. The samānodakas comprise the 7 ascendants of a person after the great-grandfather's great-grandfather, the 13 descendants of these seven ascendants, the 7 descendants after the 6th descendant of his 6 male ancestors from his own father; and descendants of himself from the 7th to the 13th. The Privy Council have ruled[1449] in a recent case that, according to the Mitākṣarā school, samānodaka relationship does not extend beyond the 14th degree (from and inclusive of the common ancestor of the claimant and the propositus).

The word 'samānodaka' literally means 'those who offer to or receive water from the same person'. The word is employed by Vas.[1450] 17. 79. But in the law of inheritance it has a technical meaning as stated above.

Bandhu (cognate).[1451] It has been seen above (on p. 742) how the Dāyabhāga shuffles cognates among the gotrajas

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1449. Vide *Atmaram v. Bajirao* L. R. 62 I. A. p. 139 where it was said that in the event of a conflict between the ancient text writers and the commentators the opinion of the latter prevails in the provinces where their authority is recognized on the ground that the commentators only voiced the usage of the time and of the country in which they lived. The case of *Bai Devkore v. Amritram* 10 Bom. 372 where the word samānodaka was interpreted to include any agnate without any limit of degree was not over-ruled but was distinguished on the ground that it was governed by the law of the Vyavahāra-mayūkha which quotes only Manu V. 60 and does not quote Bṛhan-Manu.

1450. अत ऊर्ध्वं समानार्थजन्मपिण्डोदकगोत्राणां पूर्वः पूर्वो गरीयान् । वसिष्ठ 17. 79.

1451. The word 'bandhu' is a very ancient one and has been used in various senses throughout the ages. In Ṛg. I. 113. 2 Night and Dawn (*Uṣas*) are called *samānabandhū* (bound together or having a common relative). In Ṛg. I. 154. 5 (*urukramasya sa hi bandhur-itthā*) the word appears to be used in the sense of 'friend'. In Ṛg. I. 164. 33 'nābhi' and 'bandhu' are employed one after another. The sage Vasiṣṭha tells Aśvins (Ṛg. VII. 72. 2) that their mutual friendship is ancestral and their relation is common (*yuvorhi naḥ sakhyā pitryāṇi samāno bandhuruta tasya vittam*). Vide also Ṛg. V. 73. 4, VIII. 21. 4, VIII. 100. 6, IX. 14. 2 In the Atharvaveda V. 11. 11 Atharvan is said to be the bandhu of the gods and Varuṇa is said to be both the friend (*sakhā*) and *bandhu* (relative) of the sage. In Atharvaveda VI. 15. 2 and VI. 54. 3 the same half verse occurs, 'whoever

(Continued on the next page)

literally so called. According to the Mit. bandhus are sapiṇḍas of the deceased belonging to a different gotra. Bandhus succeed under the Mit., the V. Mayūkha and all other authorities except those of the Dāyabhāga school only on failure of samānodakas (or sodakas). It will have been noticed from the discussion above that gotrajas, whether sapiṇḍas and samānodakas, are all agnates (and in some cases their wives) i. e. persons related to the deceased by unbroken male descent. The bandhus are persons related to the deceased through one or more females. The basic texts on the inheritance of *bandhus* are three verses attributed to Vṛddha-Śātātapa

(*Continued from the last page*)

whether our relative or not attacks us' *sabandhuścāsabandhuśca yosmān-abhidāsati*). In the Vāj. S. IV. 22 (*asme ramasvāsme te bandhuḥ*) ' the poet prays that the god may find delight in them and find in them his bandhu. Among sūtras Gaut. IV. 3 and Vārāhagṛhya 9 speak of pitṛbandhus and mātṛbandhus (persons related through the father and mother). In Yāj. the word *bandhu* or *bāndhava* occurs many times and has at least three senses viz. relative in general (in I. 82, 108, 113, 116, 220 ; II. 144, 280 ; III. 11, 239), agnate (II. 294), cognate (II. 135, 149, 264). Manu IX. 158 and XII. 79 employ the word bandhu in the sense of relative in general. The Āp. Dh. S. I. 7. 21. 8 and II. 5. 11. 16 and Gaut. 14. 18 employ the word '*yonisambandha*' for persons connected through a female. On the other hand Pāṇini V. 3. 23 (ṛto vidyāyonisambandhebhyaḥ) appears to employ the word in a general sense viz. 'blood relation' (whether paternal or maternal). Another word frequently used from Vedic times is 'jñāti' which generally means 'agnate' or 'relative'. Vide Ṛg. X. 66. 14, X. 117. 9. In the Atharvaveda IV. 5. 6 a man desirous of a clandestine intercourse with a woman prays '*svapantvasyai jñātayaḥ svaptvayam-abhito janaḥ*'. In I. 1. 35 Pāṇini appears to use the word jñāti in the sense of agnates 'स्वमज्ञातिधनाख्यायाम्'. In Gaut. II. 43, Āp. Dh. S. I. 3. 10. 3 'jñāti' occurs and is explained by Haradatta as agnatic relations. In Manu III. 31 (*jñātibhyo draviṇam dattvā*) jñāti appears to mean paternal relations. In Manu III. 264, IV. 179, Yāj. II. 149 jñāti is distinguished from bāndhava or bandhu and so means 'agnates'. Two other words are 'sajāta' and 'sanābhi'. The first occurs in the Tai. S. I. 6. 2. 1 and I. 6. 10. 1 (*ugroham sajāteṣu bhūyāsam*) and in the Atharvaveda I. 9. 3, III. 8. 2, VI. 5. 2 and means 'agnates or kinsmen'. The word sanābhi occurs in Ṛg. IX. 89. 4 and means also the same thing as 'jñāti' in Āp. Gṛ. VII. 20. 18, Manu V. 72, Bṛ. (S. B. E. 33 p. 310 verse 11), but in the Nirukta IV. 21 and in Kāt. (q. by Aparārka pp. 669-670) the word *sanābhi* is used in a wider sense (as including paternal and maternal relations). The Amarakośa gives sapiṇḍa as a synonym of sanābhi. नान्या संनद्धा गर्भा जायन्त इत्याहुस्तस्मादेव ज्ञातीन् सनाभय इत्याचक्षते सयोनय इति च । निरुक्त IV. 21. क्षीरस्वामी (on अमरकोश) explains समानो नाभिर्मूलमेषां ते सनाभयः and relies on पाणिनि VI. 3. 85.

or Baudhāyana. They may be translated as follows: 'The sons of one's father's sister, the sons of one's mother's sister and the sons of one's maternal uncle—these are to be known as *ātmabandhus* (one's own bandhus); the sons of one's father's father's sister, the sons of one's father's mother's sister, the son's of one's father's maternal uncle—these are to be known as one's *pitṛbandhus* (father's bandhus); the sons of one's mother's father's sister, the sons of one's mother's mother's sister, the sons of one's mother's maternal uncle—these are to be known as the *mātṛbandhus* (mother's bandhus).[1452] The Mit. states on this text that bandhus are of three kinds viz. ātmabandhus, pitṛbandhus and mātṛbandhus and that ātmabandhus succeed before pitṛbandhus on account of their greater propinquity to the deceased and pitṛbandhus succeed before the mātṛbandhus.[1453] The treatment of the rights of bandhus in the Mit. and other commentaries and digests is very meagre. This has led in modern times to a bewildering mass of case law on the inheritance of bandhus.

The first question is whether the enumeration of *bandhus* in the verses quoted is exhaustive or only illustrative. The V. P. expressly[1454] states that if the enumeration be held to be exhaustive absurd results would follow. For example, a maternal uncle's son is expressly named as an *ātmabandhu* in the verses quoted above, but his father (the maternal uncle), being not mentioned, would on that hypothesis be excluded. Therefore it was held by the Privy Council in a very early case[1455] that the enumeration of bandhus is only illustrative, that the maternal uncle though not mentioned is a nearer

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1452. आत्मपितृष्वसुः पुत्रा आत्ममातृष्वसुः सुताः। आत्ममातुलपुत्राश्च विज्ञेया आत्मबान्धवाः॥ पितुः पितृष्व : पुत्राः पितुर्मातृष्वसुः सुताः। पितुर्मातुलपुत्राश्च विज्ञेयाः पितृबान्धवाः॥ मातुः पितृष्वः पुत्रा मातुर्मातृष्वसुः सुताः। मातुर्मातुलपुत्राश्च विज्ञेया मातृबान्धवाः॥ q. by the मिता. on या. II. 136 These are ascribed to बौधायन by the परा. मा. III. p. 528 and व्य. नि. p. 455 and to वृद्धशातातप by मद. पा. p. 674 and बालम्भट्टी.

1453. तत्र चान्तरङ्गत्वात्प्रथममात्मबन्धवो धनभाजस्तदभावे पितृबन्धवस्तदभावे मातृबन्धव इति क्रमो वेदितव्यः। मिता. on या. II. 136. Almost the same words occur in the मद. पा. p. 674.

1454. योगीश्वरवचनेपि बन्धुपदेन मातुलाद्युपलक्षणमन्यथा मातुलादीनामग्रहणमेव प्रसज्येतेति तत्पुत्राणां धनाधिकारस्ततः प्रत्यासन्नानां तेषामेव स नेति महदनौचित्यमापद्येत। व्य. प्र. pp. 530-531.

1455. Vide *Gridhari Lall v. The Bengal Government* 12 Moore's I. A. 448.

bandhu and would succeed in preference to his own son who is expressly mentioned. In *Balasubrahmanya v. Subbayya* 65 I. A. 93 it was held that under the Mitākṣarā the principle of proximity of blood relationship applies to the succession of bandhus, that in determining which of two ātmabandhus is entitled to succeed nearness of degree and not religious efficacy is the proper test to apply, that when the ātmabandhus are equal in degree the test of religious efficacy may be applied to determine preference and that the maternal uncle of the deceased is entitled to preference over the deceased's father's half sister's son. This was followed in *Virangauda v. Yellappa* I. L. R. (1943) Bom. 259 (F. B.) where the mother's brother of the deceased was preferred to the father's sister's son. So also the mother's father would be a bandhu. It is strange that the deceased's own descendants through a female or the deceased's father's descendants through a female such as the son's daughter's son, daughter's son's son, daughter's daughter's son, sister's son or sister's daughter's son, are not mentioned in any authoritative commentaries or digests as his *bandhus*. Further, the bandhus enumerated in the three verses do not go beyond the 4th degree from the common ancestor. But bandhu relationship extends up to five degrees at least. There is an ancient instance of the sister's daughter's son having succeeded to a Buddhist *bhikṣu* in Cambodia (in śake 586). This would be so only according to the principles of the Mit. Vide 'Indian Cultural Influence in Cambodia' p. 55 by Dr. Bijan Raj Chatterji (Cal. 1928). All the above (such as the son's daughter's son) have been recognized by the Indian Courts as ātmabandhus entitled to inherit. In *United Provinces v. Kanhaiya Lal* 16 Lucknow 551 it has been held that the father's father's daughter's son's son would be an ātmabandhu of the deceased. In an early case[1456] in British India two propositions were laid down, viz. (1) there must be mutuality of sapiṇḍa relation between the deceased and the claimant (i. e. each must be a sapiṇḍa of the other) and (2) that in order that a man may be an heritable bandhu of the deceased they must be related *directly* through themselves or

1456. Vide *Umaid Bahadur v. Udoi Chand* 6 Cal. 119 (F. B.), 128 where it was held that a man's sister's daughter's son is a heritable *bandhu* but a remark was made (which was an *obiter dictum*) that the sister's daughter's son's son would not be a bandhu of the propositus because the latter was not a descendant of the grandfather of the former, his father or mother.

through their mother or father. These propositions were accepted by the Privy Council,[1457] which further said that sapiṇḍa relationship extends in the case of bandhus only up to five degrees. The first proposition about mutuality has some support in the interpretation put on the famous verse of Manu IX. 187 by the Bālambhaṭṭī and the Subodhinī (vide above note 1418). But difficulty is created about mutuality by the unwarranted assumption that the common ancestor must be a member of one out of four families as stated by Sarvadhikari. The other propositions, however, are not supported by any texts or sound reasoning. Since the enumeration of bandhus is admitted to be not exhaustive, no sound inference can be drawn from the list of nine bandhus that a heritable bandhu must be connected with the deceased in any particular way. All that can be required is that he must be a bandhu as defined by the Mit. and connected with the deceased by having particles of the body of a common ancestor within the limits of sapiṇḍa relationship as laid down by the Mit. The limit of five degrees categorically laid down by the P. C. is not, it is submitted with great respect, based on very sure or strong foundations. The Mit. says that sapiṇḍa relationship extends to seven degrees when traced through the father, that wherever the word 'sapiṇḍa' is employed this meaning has to be understood and it extends up to five degrees when traced through the mother. Vide H. of Dh. Vol. II. pp. 454–455. What is material is

1457. Vide *Ramchandra v. Vinayak* L. R. 41 I. A. 290 (= 42 Cal. 384 at pp. 418–421) for the propositions about mutuality, relationship through himself, father or mother and restriction to five degrees. Dr. Sarvadhikari (T. L. L. p. 630ff) is not right in inferring from the nine bandhus expressly mentioned in the verses quoted above that the propositus must be a descendant of a common ancestor who is a member of the following families, viz. (1) claimant's agnate family, (2) claimant's mother's agnate family, (3) claimant's father's mother's agnate family, (4) claimant's mother's mother's agnate family. Following this opinion, it was held in *Lowji v. Mithabai* 2 Bom. L. R. 842 that the great-grandson of a sister is not an heir under Hindu Law. But this decision is against the definition of sapiṇḍa given by the Mit. and is wrong. Vide *Chinna v. Padmanabha* 44 Mad. 121 pp. 128–130 for a reasoned and trenchant criticism of the requirement of mutuality laid down without any discussion or explanation in the case of 6 Cal. 119 and the views of Sarvadhikari. It is to be regretted that owing to the ignorance of Sanskrit on the part of most judges that had to decide cases of Hindu Law, the opinions of individual learned authors like Mayne and Sarvadhikari were followed without personal examination by judges of the authorities on which the opinions of authors were based.

not whether a female intervenes somewhere, but whether the person about whose sapiṇḍaship a question is raised traces his descent to a common ancestor through his father or through his mother. In the P. C. case the claimant claimed sapiṇḍaship with the deceased through his mother, and it was rightly decided that he being 6th from the common ancestor was not a bandhu. But to lay down as a universal rule that a bandhu in order to inherit under the Mit. should not be beyond five degrees from the common ancestor is against the definition of sapiṇḍa given by the Mit. itself and unduly narrows the express words of the Mit. The words of the P. C. 'the sapiṇḍa relationship, on which the heritable right of collaterals is founded, ceases in the case of the bhinna-gotra sapiṇḍa with the fifth degree from the common ancestor' (L. R. 41 I. A. 290 at p. 312) are very generally expressed and are susceptible of the interpretation that they lay down the rule of five degrees even when the claimant claims[1458] relationship with the deceased through his own father. Some support for the Privy Council rule that sapiṇḍa relationship ceases with the 5th

1458. Vide *Brij Mohan v. Kishun Lal* (1938) A. L. J. 670 where the Allahabad High Court held that, even when the claimant traced sapiṇḍa relationship through his father, heritable bandhu relation ceases after the fifth degree. But in *Kesar Singh v. Secretary of State for India* 49 Mad. 652 at p. 690 it is said that, though in the P. C. decision there are some observations which at first sight imply that sapiṇḍa relationship of bandhus for inheritance ceases with the 5th degree in all cases, there is nothing to suggest that the Privy Council intended to do away with the wellknown distinction between bhinnagotra sapiṇḍas that claim relationship through their father and those that trace it through their mother. There is great diversity of view yet about what the P. C. meant in 41 I. A. 290. In *Seelam Nagamma v. Reddam* I. L. R. (1943) Mad. 759 (F. B.) it was held that Dr. Sarvadhikari is wrong in his restrictions of heritable bandhus to the lines he propounds, that 54 All. 698 is wrongly decided and that 49 Mad. 652 lays down the correct law. On the other hand, in *Hanmant v. Vasudev* I. L. R. (1943) Bom. 465 it has been held that the P. C. means that heritable bandhus whether claiming through the father or the mother must be within five degrees from the common ancestor. Vide *Debi Das v. Mukat Behari* I. L. R. (1943) All. p 131 which lays down several rules deducible from an examination of numerous cases. As an illustration of how the law of the succession of bandhus is in a bewildering state, the following two cases may be read. In *Sakharam v. Ralkrishna* 49 Bom. 739 (F.B.) it was held that a father's sister's son is to be preferred under the V. Mayūkha to the maternal uncle, but the P. C. decided in *Balsubramanya v. Subbayya* L. R. 65 I. A. 93 that the maternal uncle is entitled to preference over the father's sister's son.

degree from the common ancestor in the case of bhinnagotra sapiṇḍas may be found in the words of Mitramiśra in his commentary on Yāj. I. 52, in the implication of the words of Kullūka[1459] on Manu V. 60 and in the remarks of the Bālambhaṭṭī (p. 191). But this view is opposed to other weighty authorities such as the Nirṇayasindhu and the Dharmasindhu.

The whole law about the succession of bandhus is in a confused state owing to conflicting decisions, but the P. C. has laid down certain propositions which may be set down here: (1) ātmabandhus succeed before pitṛbandhus and pitṛbandhus before mātṛbandhus ; (2) the nearer in degree in each class of bandhus is preferable to the more remote; (3) as between bandhus of the same class, the conferring of spiritual benefit would be a ground of preference, as the Vīramitrodaya invokes that principle in several cases (and so the father's half sister's son would be preferred to the mother's sister's son, though both are ātmabandhus and of equal degree); (4) if the above three rules fail, bandhus *ex parte paterna* (on the father's side) succeed before bandhus *ex parte materna* (on the mother's side); (5) the bandhu between whom and the propositus a lesser number of females intervenes is to be preferred. As a corollary of the 2nd rule it should follow that the descendants of the propositus would be preferred to ascendants and collaterals and that bandhus of the same class that are descendants of a nearer line would succeed in preference to descendants of a remoter line though of the same class. But this last proposition has not yet been settled by the Privy Council. It has been, however, held in *Debi Das v. Mukat Behari* I. L. R. (1943) All. 131 that a sister's son's son should be preferred to the deceased's cousin's daughter's son, since the former belongs to a nearer line.

For the purposes of this work it is irrelevant and unnecessary to wade through the mass of case-law on the succession of

1459. कुल्लूक after quoting the मत्स्यपुराण on the question of sapiṇḍaship based on the offerings of piṇḍas remarks, 'सगोत्रत्वे चेयं सपिण्डता । अत एव शङ्खलिखितौ—सपिण्डता तु सर्वेषां गोत्रतः सांसपौरुषी.' मित्रमिश्र on या. I. 52 quotes the smṛti text, 'सगोत्रे खलु साषिण्ड्यं विज्ञेयं सासपौरुषम् । विगोत्रे तत्तु सर्वत्र विज्ञेयं पाञ्चपौरुषम् ॥' and remarks 'तेन मातृमातामहादिषष्ठ्या अपि विवाहत्वं धर्मसंमतं न विरुध्येत। माता च स्वारम्भप्रयोजकत्वशोणिता बोध्या । तेन पितृमातामहपुत्र्यादेर्व्युदासः । एवं च पितृमातामहाद्यवधिकसप्तम्याः परिणयाचारोपि सङ्गच्छते ।'

bandhus. One or two matters, however, call for remark. If the theory of spiritual benefit be strictly applied, many of those who would inherit as bandhus under the Mit. system would be barred from inheritance. For example, the daughter's son's son[1459a] or daughter's daughter's son would be a heritable bandhu under the Mitākṣarā, but under the Dāyabhāga he would not be so, as he offers no piṇḍa to the deceased or to any of the latter's ancestors. It is probably to obviate this unnatural and unjust consequence that the Dāyatattva refers to the text of Bṛ. (quoted above in n 1419) in which the word 'bāndhavāḥ' occurs, remarks that the relatives of the father and mother of (the deceased) inherit in the order of their nearness to the latter and quotes the three verses about the three classes of bandhus, indicating thereby that spiritual benefit is not the sole test, but that where it fails the test of blood relationship may be applied.[1460]

Very elaborate rules have been evolved by Sarvadhikari in his Tagore Law Lectures on the Hindu Law of inheritance (2nd ed. of 1922, pp. 571–640). The author devoted great industry, labour and ingenuity in evolving those rules. But one regrets to say that he raised a stupendous structure on very slippery and meagre foundations. And the pity of it is that many Judges have more or less followed his lead, though emphatic disapproval of his views, whereby the list of bandhus capable of inheriting has been very much restricted, has not been wanting.[1461] It is not possible to examine here in detail his reasonings and results. But the futility of much that he has evolved can and must be briefly shown. The only solid foundations that we have in the Mit. are: (1) the definition of sapiṇḍa given by it on Yāj. I. 53; (2) the remark that bandhus are bhinnagotra sapiṇḍas (as contrasted with gotrajas); (3) that the bandhus of a man may be described under three classes; (4) that those that may be called ātmabandhus succeed before those called pitṛbandhus and these latter inherit before mātṛbandhus. It is agreed on all hands that

1459a. Vide 11 Mad. 287, 17 All. 523, 30 Mad. 406 (for the daughter's son's son's succession) and 31 All. 454, 58 Mad. 238 (for the daughter's daughter's son's succession).

1460. बृहस्पत्युक्तबान्धवा इत्यनेन यथाक्रममासन्नपितृमातृबान्धवा धनाधिकारिणः। ते च 'आत्मपितुः स्वसुः पुत्राः ... विज्ञेया मातृबान्धवाः।' दायतत्त्व p. 196.

1461. Vide *Kesar Singh* v. *The Secretary of State for India* 49 Mad. 652 at pp. 661, 686–89 for dissent from Sarvadhikari's views.

the nine bandhus enumerated in the verses of Śātātapa or Baudhāyana are only illustrative. Therefore, the nine bandhus expressly mentiond should not have been used to *exclude* any one as not a heritable bandhu, as we have not got anywhere an exhaustive enumeration. Any one who satisfied the first two requirements stated above was a bandhu. Of the nine bandhus enumerated in the verses quoted above, none is connected by direct descent with the propositus, his father or mother; but one is a descendant of his paternal grandfather, one of his paternal great-grandfather, two of his maternal grandfather, two of his father's maternal grandfather, one of his mother's paternal grandfather, two of his mother's maternal grandfather. Sarvadhikari makes a different classification of these (p. 627) viz. ' two are connected through the father, three through the mother, two through the paternal grandmother and two through the maternal grandmother '. The whole trouble has been caused by this latter grouping. Instead of emphasizing lines of direct descent, he catches hold of females who are never spoken of in ancient works in connection with tracing descent (except in the case of the mother of the man concerned). If, because the illustrations given happen to be connected only with four lines of families, persons connected with the propositus through other lines are to be excluded, there is no reason why a man's own daughter's son's son, son's daughter's son, sister's son, or sister's son's son should be held to be bandhus. They bear no close analogy to the ātmabandhus enumerated by Śātātapa. But it is admitted by Sarvadhikari that they are ātmabandhus. The terms ātmabandhu, pitṛbandhu and mātṛbandhu are mere labels or devices to show nearness and preference among bandhus. Acc. to the V. Mayūkha[1462] the words pitṛbandhu and mātṛbandhu are to be dissolved as *sasthī-tatpurusa* compounds (pituḥ bāndhavāḥ

1462. ननु पत्न्यादीनां सर्वेषां सूत्रनिरूपितानामिव धनभाक्त्वं बान्धवानामपि तथैवास्तु । अतः कथं पितुर्मातुश्च बान्धवानां धनसम्बन्धः । पितुः पितृष्वसुः पुत्राः इत्यादि तु संज्ञासंज्ञिसम्बन्धमात्रार्थं न धनसम्बन्धार्थमिति चेदुच्यते । विनाप्येतद्वचनं पितृमातुलपितृपितृव्यादिष्विव पितृमातृबान्धवेष्वपि योगेनैव तत्प्रवृत्तिसम्भवे संज्ञासंज्ञिसम्बन्धबोधनानर्थक्यापत्तिः । तेन बन्धूनुद्दिश्य धनसम्बन्धविधौ पितृमातृबन्धुमापणेनैव वचोर्थवत्ता । बन्धूद्देशेनाशौचादिविधावप्येवमेवेति दिक् । व्य. मयूख p. 144. In *Gajadhar Prasad v. Gauri Shankar* 54 All. 698 (F; B.) Mukerji J. (at pp. 725-26) prefers to dissolve the word पितृबन्धु or मातृबन्धु as either पञ्चमीतत्पुरुष or तृतीयातत्पुरुष (पितुः बन्धुः, पित्रा बन्धुः) rather tban as षष्ठीतत्पुरुष. No Sanskrit authority is quoted for doing this and this view of his is opposed to the view of the व्य. मयूख, the सरस्वतीविलास and some other works.

or mātuḥ bāndhavāḥ) i. e. according to it pitṛbandhus or mātṛbandhus are bandhus of the father or mother and must also be bandhus of the propositus if they are to inherit. It is not known in what context the three verses quoted in the Mit. and other digests from Śātātapa or Baudhāyana occurred. In Manu V. 81 it is laid down that one should observe mourning on the death of a pupil, sacrificial priest and *bāndhavas* for the duration of *pakṣiṇī*. It is possible that the three verses only illustrate what is meant by bāndhavas in such a connection.

The Bālambhaṭṭī (vyavahāra p. 214) here also explains that females are included in the word ' bandhu ', although the verses quoted speak of ' putraḥ ' only and the Bombay and Madras High Courts have allowed female bandhus to inherit, though in Madras the position assigned to female bandhus is very much lower than in Bombay.

Strangers as Heirs—In default of even bandhus, the Mit. states[1463] that the teacher (of the veda) is the heir of the deceased, in default of the teacher the pupil (and relies on Āp. Dh. S II. 6. 14. 3) and that in default of pupil a *sabrahmacārin* (fellow student whose *upanayana* was performed by the same teacher as that of the deceased and who studied the veda under the same teacher)[1464] inherits. In the absence of even a fellow student the wealth of a brāhmaṇa was to be given to some *śrotriya* (a brāhmaṇa learned in the Veda) as laid down by Gaut. (28. 39) and in default of a śrotriya in the same village, as said by the Dāyabhāga XI. 6. 27, to any brāhmaṇa, since Manu (IX. 188-189) says, ' in the absence of all (heirs), brāhmaṇas that have studied the three vedas, that are pure and restrained, take the wealth ; in this way dharma does not suffer : the rule is that the wealth of a brāhmaṇa should never be taken by the king '. Nār.[1465] (dāyabhāga, 51-52) is to the same effect. To the same

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1463. बन्धूनामभावे आचार्यः । तदभावे शिष्यः । पुत्राभावे यः प्रत्यासन्नः सपिण्डस्तद-भावे आचार्यः । आचार्याभावे अन्तेवासीत्यापस्तम्बस्मरणात् । मिता.

1464. शिष्याभावे सब्रह्मचारी धनभाक् । येन सहैकस्मादाचार्यादुपनयनाध्ययनत-दर्थज्ञानप्राप्तिः स सब्रह्मचारी । मिता. The word सब्रह्मचारिन् is derived by Pāṇini VI. 3. 86 as ' चरणे ब्रह्मचारिणि '. The सि. कौ. explains ' ब्रह्मचारिण्युत्तरपदे समानस्य सः स्याच्चरणे समानत्वेन गम्यमाने '.

1465. ततः सजातिः सर्वेषामभावे राजगामि तत् ॥ अन्यत्र ब्राह्मणेभ्यः स्याद्राजा धर्म-परायणः । नारद (दायभाग, 51-52). The मिता. has a different verse ' नारदे-नाप्युक्तम्—ब्राह्मणार्थस्य तन्नाशे दायादश्चेन्न कश्चन । ब्राह्मणायैव दातव्यमेनस्वी स्यान्नृपोऽन्यथा । इति । '

effect are Viṣṇu[1466] Dh. S. 17. 13–14, Baud. Dh. S. I. 5. 120–122 and Śaṅkha-Likhita, Devala (q. by V. R. p. 597 and V. C. p. 155). This direction of so many ancient sages has not been respected in modern times.[1467] Manu (IX. 189) and Bṛ.[1468] (S. B. E. vol. 33, p. 380 verse 67) say that the wealth of kṣatriyas, vaiśyas and śūdras escheats to the king in default of heirs up to a fellow student. When the king takes by escheat heirless property he has to set apart a portion of the wealth of the deceased for the maintenance of his concubines and servants and for the performance of his funeral rites and śrāddhas as stated by Kāt.[1469] 931. Kauṭ. III. 5, Nār. (dāyabhāga, 52) provide that the king (when he takes heirless property) should provide maintenance for his women and both the Mit. and the V. Mayūkha explain that the word 'women' stands for *avaruddhastrī* (exclusively kept concubine) and not for his wives (who would succeed as heirs and then there would be no escheat), because the word '*patnī*' is not employed in the verse. These verses of Nār. and Kāt. are the foundation of the right to maintenance of a concubine against the heirs of the deceased paramour in modern times.[1470]

1466. तदभावे ब्राह्मणधनवर्जं राजगामि । ब्राह्मणार्थो ब्राह्मणानाम् । विष्णुधर्मसूत्र 17. 12–13; अथाप्युदाहरन्ति । ब्रह्मस्वं पुत्रपौत्रघ्नं विषमेकाकिनं हरेत् । न विषं विषमित्याहुर्ब्रह्मस्वं विषमुच्यते । तस्माद्राजा ब्राह्मणस्वं नाददीत परमं ह्येतद्विषं यद् ब्राह्मणस्वमिति । बौ. ध. सू. I. 5. 120–122 ; this is q. by वि. र. p. 597 (except the half verse न विषं०), वि. चि. pp. 155–156; परिषद्गामि वा श्रोत्रियद्रव्यं न राजगामि । शङ्खलिखित q. by वि. र. p. 598, वि. चि. p. 156. This is quoted as पैठीनसि's by अपरार्क p. 746.

1467. Vide *Collector of Masulipatam* v. *Cavaly Venkata* 8 Moore's I. A. 500 at pp. 526–527.

1468. येऽपुत्राः क्षत्रविट्शूद्राः पत्नीभ्रातृविवर्जिताः । तेषां धनहरो राजा सर्वस्याधिपतिर्हि सः ॥ बृह. q. by अपरार्क p. 746, वि. र. p. 593.

1469. अदायिकं राजगामि योषिद्भृत्यौर्ध्वदेहिकम् । अपास्य श्रोत्रियद्रव्यं श्रोत्रियेभ्यस्तदर्पयेत् ॥ कात्या q. by मिता. on या. II. 135, परा. मा. III. p. 535, व्य. मयूख p. 139; तद्रप्यवरुद्धस्त्रीविषयं योषिद्ग्रहणात् । मिता. ; अदायादकं राजा हरेत् स्त्रीवृत्तिप्रेतकार्यवर्जमन्यत्र श्रोत्रियद्रव्यात् । तत् त्रैविद्येभ्यः प्रयच्छेत् । अर्थशास्त्र III. 5.

1470. Vide 2 Bom. 573, 607, 12 Bom. 26 (in both Kāt. is quoted), 26 Bom. 163, L. R. 53 I. A. at p. 163 for the concubine's right. In 48 Bom. 203 a woman whose husband was alive was not treated as a concubine entitled to maintenance from the heirs of her deceased paramour, but this decision has been recently overruled by a Full Bench in 47 Bom. L. R. p. 5 (F. B.).

Yāj. (II. 137) states a special rule[1471] which is an exception to the general rule of inheritance laid down in II. 135–136 viz. '(the heirs) who take the wealth of a forest hermit, a *yati* (ascetic), a (perpetual) vedic student are in order the (vedic) teacher, a virtuous pupil, one who is looked upon as a brother and belongs to the same order'. According to the Mit. the heirs mentioned are to be taken in the reverse order of the words of the text i. e. the ācārya (who is mentioned first among the three heirs) is to be taken as the heir of the last of the three mentioned in the first half of the verse, so that the teacher, good pupil and the person looked upon as brother are respectively the heirs of the perpetual student, the ascetic and the forest hermit. According to the Dāyabhāga also the reverse order has to be taken, but it says that the wealth of the forest hermit, yati and perpetual student is taken respectively by one looked upon as brother, a worthy pupil and teacher, but that in the absence of these, any one who is in the same āśrama as the deceased may take it. According to the Madanaratna[1472] the order of heirs is the direct one, that is, the teacher, good pupil and accepted brother take the wealth of the forest hermit, ascetic and perpetual student, since the Viṣṇu Dh. S. (17. 15–16) expressly says so. The Mit. adds that a brahmacārin is of two kinds viz. perpetual (*naiṣṭhika*) and *upakurvāṇa* (who intends to remain as a student for some time and then marry in order to confer the benefit of male progeny on his ancestors), that

1471. वानप्रस्थयतिब्रह्मचारिणां रिक्थभागिनः । क्रमेणाचार्यसच्छिष्यधर्मभ्रात्रेकतीर्थिनः ॥ या. II. 137 ; क्रमेण प्रतिलोमक्रमेण ... ब्रह्मचारी नैष्ठिकः उपकुर्वाणस्य तु धनं मात्रादय एव गृह्णन्ति । ... सच्छिष्यः पुनरध्यात्मशास्त्रश्रवणधारणतदर्थानुष्ठानक्षमः । दुर्वृत्तस्याचार्यादेरपि भागानर्हत्वात् । ... धर्मभ्राता प्रतिपन्नो भ्राता एकतीर्थी एकाश्रमी धर्मभ्राता चासा एकतीर्थी च धर्मभ्रात्रेकतीर्थी । मिता.; प्रतिलोमक्रमेण यथासम्भवं धनं ज्ञेयम् । ब्रह्मचारी च नैष्ठिकोभिमतः पित्रादिपरित्यागेन यावज्जीवमाचार्यकुलनिवासपरिचर्यानिष्ठायाः तेन कृतत्वात् । दायभाग XI. 6.36; शिष्यस्य सच्छब्दस्तूपलक्षणम् । अत आचार्यधर्मभ्रात्रेकतीर्थिनावपि सुवृत्तावेव धनग्राहिणावित्याह । ... ... अनेनैवाभिप्रायेण याज्ञवल्क्योपि आचार्यसच्छिष्यधर्मभ्रात्रेकतीर्थिन इत्युभयत्र सम्बन्धं द्योतयितुं सच्छिष्य इति मध्ये परिगणयामास । सुबोधिनी. मदनरत्न explains धर्मभ्राता as समानाचार्यक and दीपकलिका explains एकतीर्थी as समानगुरु. The word उपकुर्वाण occurs in वैखानसस्मार्तसूत्र II. 12 and in हारीत q. by अपरार्क p. 71. नैष्ठिक is derived from निष्ठा 'end'. विष्णुध. सू. 28. 46 and वैखा. II. 12 employ the word नैष्ठिक. लघुविष्णु I. 24 defines: निष्ठां तत्रैव यो गच्छेन्नैष्ठिकः स उदाहृतः and मेधा. on मनु. III. 1 explains निष्ठां समाप्तिं गच्छति नैष्ठिकः.

1472. एवं क्रमशब्दस्य प्रतिलोमक्रमपरत्वमाश्रित्य नैष्ठिकब्रह्मचार्यादिधनमाचार्यादयो गृह्णन्तीत्युक्तं विज्ञानेश्वराचार्यैः । अस्माकं तु वानप्रस्थधनमाचार्यो गृह्णीयाच्छिष्यो वेति विष्णुवाक्यदर्शनात् क्रमशब्दोऽनुलोमक्रमपर इति प्रतिभाति । मदनरत्न folio 101 b. This view of the Madanaratna is referred to by the व्य. मयूख p. 145.

Yājñavalkya's words apply only to the former, that if the latter (upakurvāṇa) leaves any wealth of his own it is taken by his mother, father and the other heirs. The Mit. further says that a worthy pupil is one who is capable of studying the philosophical parts of the Veda, of understanding them and of acting up to them, that a badly behaved pupil will not succeed, so also a badly conducted teacher shall not succeed. The Mit. explains that Yāj. III. 47 allowed a forest hermit to accumulate materials that will be enough to meet his needs for a day, a month or six months or a year and so he may on his death leave some wealth. Similarly, though an ascetic was required by Gautama (III. 10) to make no accumulation of wealth, yet even an ascetic requires clothes to cover his body, he has his sandals and books on Yoga and the like ; and so also the perpetual student requires these.

The heirs enumerated above succeed to persons in those religious orders in priority of their kindred. It has been held that members of the three twice-born classes alone can be ascetics with the result that their pupils inherit and not the kindred and that in the case[1473] of śūdra ascetics their kindred succeed unless some usage to the effect that a pupil inherits is proved. For the foundation and administration of *maṭhas* and properties attached to them, the selection of the heads of maṭhas and their powers and duties and about ascetics and their pupils, vide H. of Dh. vol. II. pp. 906–914 and pp. 944–952.

Reunion.—A reunion properly so called can take place only between those who were parties to the original partition. Reunion, therefore, postulates three stages, viz. (1) joint family, (2) partition between members of a joint family, (3) an intention and an agreement, express or implied, to reunite in estate among members who were parties to the partition. If persons who had separated in interest merely stay together, that is not

1473. Vide *Dharmapuram v. Virapandiyam* 22 Mad. 302 (holds that the ordinary law of succession applies to a śūdra ascetic) ; *Ramdas v. Baldevadasji* 39 Bom. 168 ; *Somasundaram v. Vaithilinga* 40 Mad. 846, at p. 869; *Haris Chandra v. Atir* 40 Cal. 545 ; but see *Sambasivam v. Secretary of State* 44 Mad. 704 (holding that the disciple of a śūdra ascetic who dies without leaving any blood relations is an heir under the Hindu Law, but that strict proof would be required of the claimant's spiritual relationship).

reunion in law, as said by the Sm. C. II. p. 302 and Vivāda-candra[1474] p. 82. The Vivādacandra quoting Viṣṇupurāṇa says that reunion may be implied from a course of conduct, even though an express agreement cannot be proved. There is a divergence of views as to who can reunite. The Mit., the Dāyabhāga[1475], the Sm. C. hold, literally construing a verse of Bṛ. (S. B. E. 33 p. 381 verse 72), that a member of a joint family when once divided can reunite only with his father, brother or paternal uncle, but not with any other relation (such as a paternal uncle's son or paternal grand-father), while the V. C. (p. 157), the V. Mayūkha (p. 146), the V. P. (p. 533) hold that the members expressly mentioned by Bṛ. are only illustrative and that a person may reunite with *any* member who was a party to the original partition. A reunited person is called *saṁsṛṣṭa* or *saṁsṛṣṭin*[1476] (who has reunited wealth). The subject of reunion has a comparatively ancient history. Gaut. 28. 26 states the general rule that on the death of a reunited co-parcener the surviving reunited member succeeds to the share of the deceased. Kauṭ. (III. 5 p. 160) states[1477] that those, who live together though they may have no ancestral estate or do so after dividing their ancestral estate, may divide their reunited estate again in equal shares. Manu IX. 210 (= Viṣṇu Dh. S. 18. 41) is similar to it.

1474. सहवासे पुरुषाणामाहत्य संसर्गाभावाद्धनद्वारेण संसर्गो वाच्य इति तन्निमित्त-भूतावच्छेदकापनोदेन विभक्तानां धनादीनां पूर्ववदेकराशीकरणपर्यन्तः संसर्गो न पुनः सहवासमात्रमिति मन्तव्यम्। स्मृतिच II. p. 302; संसर्गो नैकपाकवासमात्रं संभूयव्यवसाये गतत्वात् किं तु विभज्यैकीकृतधनत्वम्। ... ... यावत्कृतभाविभवद्धनं मम यत्तव यथा तव तथा ममेति स्वीकारः स च क्वचिद्वाचनिकः क्वचिद्व्यवहारान्वेयः। विवादचन्द्र p. 82; यत्र संसर्गे प्रमाणान्तरं नास्ति तत्र साधारणकृत्ये तत्तदंशविनियोजनमपि प्रमाणम्। न च तादृशवचनाभावे तदभावः, अनुक्त्वापि कृत्या व्यवहारसिद्धेः। तदुक्तं विष्णुपुराणे। अनुक्त्वापि वचः किंचित् कृतं भवति कर्मणा। इति। विवादचन्द्र p. 86. संसर्गं तु संसृजतोरनुमतिर्मूलम्। वि. चि. p. 157; विद्यमानं भावि वा धनमावयोः पुनर्विभागावधि साधारणमित्याकारिका बुद्धिरिच्छा वा संसर्गः। व्य. मयूख p. 146.

1475. संसृष्टत्वं च न येन केनापि किं तु पित्रा भ्रात्रा पितृव्येण वा। यथाह बृहस्पतिः। विभक्तो यः पुनः पित्रा भ्रात्रा वैकत्र संस्थितः। पितृव्येणाथवा प्रीत्या स तत्संसृष्ट उच्यते। इति। मिता. on या. II. 138; संसृष्टिता च पित्रादिनैव कर्तव्या नान्येन विभक्तो यः पुनः पित्रा इत्यादि प्राग्लिखितबृहस्पतिवचनादिति बहवः। अस्माभिस्तूपलक्षणं पित्रादिग्रहण-मित्यादि प्रागेव प्रपञ्चितम्। व्य. प्र. p 533.

1476. विभक्तं धनं पुनर्मिश्रीकृतं संसृष्टं तद्यस्यास्तीति संसृष्टी। मिता on या. II. 138.

1477. संसृष्टिनि प्रेते संसृष्टी रिक्थभाक्। गौ. 28. 26; अपितृद्रव्या विभक्तपितृद्रव्या वा सह जीवन्तः पुनर्विभजेरन्। अर्थशास्त्र III. 5..

The verses of Yāj. (II. 138-139)[1478] on succession to a deceased reunited person are understood by the Mit. to be an exception to the rules contained in Yāj. II. 135-136 laying down that the wife and others inherit the property of a person dying sonless. Therefore it follows that where a person reunites with his brother and then dies leaving a son not reunited with him, it is the son who will inherit and not the brother, though reunited. But if A separates from two sons B and C of whom B reunites with him and C does not and then A dies, then the reunited son B succeeds to A's interest and C takes nothing. This is expressly stated by the Vivādacandra p. 85 that relies on the Smṛtisāra[1479]. The two verses of Yāj. (II. 138-139) are variously read and interpreted by the Mit. and other commentators and it is not possible nor quite necessary to set out all these readings and explanations. Acc. to the Mit the two verses mean: 'in the case of a deceased reunited person, the (surviving) reunited member should give (to the posthumous son of the former) the share of the deceased but may take it himself if there is no son (but only a wife); but from among the reunited brothers, the full brother, if reunited, should similarly give to the posthumous son of the deceased the latter's share and (if there be no son) he should take it himself to the exclusion of reunited half brothers; a reunited half brother takes the wealth of the deceased reunited member (dying sonless) and not another half brother who is not reunited; a full brother, though not reunited, may take the wealth along with a half brother who is reunited but the latter will not alone be entitled'. In this interpretation the word 'asaṁsṛṣṭī' in the latter half of II. 139 has to be taken in two connections, once with 'anyodaryaḥ' in the first half and then again with 'saṁsṛṣṭaḥ' (in the 2nd half). This last word is to be understood in two senses, viz.

1478. संसृष्टिनस्तु संसृष्टी सोदरस्य तु सोदरः । दद्याद्पहरेच्चांशं जातस्य च मृतस्य च ॥ अन्योदर्यस्तु संसृष्टी नान्योदर्यो धनं हरेत् । असंसृष्ट्यपि चादद्यात्संसृष्टो नान्यमातृजः ॥ या. II. 138-139. The first is विष्णुधर्मसूत्र 17. 17 also. अपरार्क (p. 747) reads 'नान्योदर्यधनं हरेत्' and आदद्यात्सोदर्यो नान्यमातृकः. विश्वरूप, जितेन्द्रिय and विवादचन्द्र p. 84 read 'चादद्यात्सोदरो नान्यमातृजः.'

1479. Vide *Fakirappa v. Yellappa* 22 Bom. 101, 104 for the proposition that a reunited son has a preferential right of inheritance to a grandson who remains separate. Vide विवादचन्द्र p. 85 'यस्तु पिता पुत्रेणैव केनचित्संसृष्टस्तस्यांशं संसृष्ट एव गृह्णीयान्नासंसृष्टी संसृष्टिनस्तु संसृष्ट इति वचनात् । ... अत एव स्मृतिसारे यदा पितैव केनचित्पुत्रेणैव संसृष्टस्तदा तद्धनं संसृष्टिपुत्रो गृह्णीयान्नासंसृष्टी विभक्तपुत्रः संसृष्टिनस्तु संसृष्टीत्यविशेषेणाभिधानादित्युक्तम् ।.

(1) full brother (with the preceding word asaṁsṛṣṭi) and (2) 'reunited' (with the word 'anyamātṛjaḥ'). Further, acc. to the Mit. we have to understand 'eva' after 'anyamātṛjaḥ'. Aparārka (p. 748) reads differently and he, Viśvarūpa and Śrīkaramiśra (Dāyabhāga XI. 5-16) explain that a full brother though not reunited takes the whole estate and not the half brother though reunited with the deceased. The V. Mayūkha differs from the Mit. when it says that the word *aputrasya* (of one dying sonless) is not to be understood with Yāj. (II. 138). It derives two propositions from the first half of Yāj. II. 138, viz (1) the wealth of one dying reunited is taken by the surviving reunited member or members; (2) in a competition between reunited full brother and reunited half-brother, the former takes the whole. The latter half of II. 138 is an independent sentence (and not joined with the preceding half as the Mit. understands) and applies where a reunited member dies leaving a wife who is pregnant but that fact being unknown the other reunited members divide the estate. In such a case if a son is born the surviving members should hand over to the son the share of the deceased reunited member. But if no such son is born then the survivors may take the estate. In II. 139 the Mayūkha holds that the words 'anyodarya' and 'anyamātṛja' are not restricted to brothers only, but apply to a paternal uncle or his sons or other persons who were reunited, because their mother is also different from the mother of the deceased. The Dāyabhāga discusses Yāj II. 138-139 under the topic of succession to the separate property of a sonless man and its treatment of succession to reunited property is very meagre (vide XII).[1480] The V. P. p. 533 notices this and levels against Jīmūtavāhana the criticism that he got confused. Aparārka (pp. 748-749) seems to be of the same opinion as the Dāyabhāga. The V. P. follows the Mit. and criticizes the explanation given by Śrīkara, Sm. C. and others (pp. 535-538). It says that the texts of Śaṅkha, Nārada and others conflict with the text of Yāj. II. 135 and that the order of heirs as to a reunited co-parcener is based on express texts and not on Yāj. II. 135[1481] or logical reasoning. According to the V. P. the order of succession to a deceased reunited

1480. एतेन पत्न्याद्यपुत्रधनग्रहणाधिकारिगणे भ्रात्रधिकारावसरे वचनमिदं प्रवर्तते इति व्याचक्षाणो जीमूतवाहनो भ्रान्त एवेत्यवसेयम् । व्य. प्र. p. 533.

1481. ततश्च पत्नीदुहित्रादिक्रमविरोधाद्विरोधायैतत् संसृष्टभागविषयमिति कल्प्यते । भिन्नक्रोपक्रमैवाधिकपत्नीदुहित्रादिक्रमोऽत्र वाचनिकक्रमेण बाध्यते । अस्मिन् क्रमे कस्यचिन्न्यायस्याभावाद्वाचनिक एवायं क्रमः । व्य. प्र. p. 539.

person seems to be: (1–3) son, grandson, great-grandson; (4) reunited full brother; (5) reunited half brother and separated full brother; (6) reunited mother; (7) reunited father; (8) any other reunited member; (9) half brother not reunited; (10) mother not reunited; (11) father not reunited; (12) widow; (13) daughter; (14) daughter's son; (15) sister. The V. Mayūkha gives the order as follows: (1) son if reunited; (2) son not reunited, though there may be reunited members (other than a son); (3) the parents if reunited in preference to other reunited persons (other than a son); (4) full brother if reunited; (5) full brother not reunited and half brother reunited; (6) half brothers and uncles, if reunited; (7) other male members reunited (in preference to wife though she be reunited); (8) wife if she be reunited; (9) full sister (or daughter according to another reading);[1482] (10) any other sapiṇḍa who is nearest. It is to be noted that Manu IX. 212 prescribes a peculiar rule of succession for reunited co-parceners viz. that full brothers (not reunited) and full sisters of the deceased reunited co-parcener equally inherit along with half brothers that are reunited the wealth of the deceased. This verse of Manu has been variously explained by Kullūka, Aparārka p. 749, Sm. C. (II pp. 304–305), Nīlakaṇṭha, Vivādacandra (p. 83) and others.

It may be stated here that cases of reunion come very rarely before the courts.

1482. या तस्य भगिनी सा तु ततोंशं लब्धुमर्हति । अनपत्यस्य धर्मोऽयमभार्यापितृकस्य च ॥ बृह. q. by व्य. मयूख p. 152, व्य. प्र. p. 539. The व्यव. म. says: केचित्तु या तस्य दुहितेति पेठुः । दुहितृभगिन्योरभावेऽनन्तरः सपिण्डः. Vide परा. मा. III. p. 541 for similar words.

CHAPTER XXX

STRĪDHANA

Strīdhana (woman's property). This subject abounds with differing views on several topics that fall under it, as will be seen below.

The germs of the topic of strīdhana can be traced to the Vedic Literature. As Sir Gooroodas Bannerjee remarks (in 'Marriage and Strīdhana' p. 370), 'nowhere were proprietary rights of women recognized so early as in India; and in very few ancient systems of law have these rights been so largely conceded as in our own'. The wedding hymn in the Ṛgveda (X. 85) contains two verses[1483] (13 and 38) which indicate that gifts were sent to the bridegroom's house with the bride. They are: 'the bridal gifts of Sūryā that Savitṛ sent off have gone forth; in the Aghās (Maghā constellation) are struck the kine and in the Arjunīs (Phalgunī constellation) is carried (the bridal gift); for thee in the beginning they carried about Sūryā together with the bridal gifts &c.'. Sāyaṇa explains 'vahatu' as 'cows and other objects given for pleasing the girl to be married', while Lanman (Harvard O. series vol. VIII p. 753) renders it as 'bridal car'. Sāyaṇa's interpretation suits the context much better. In the Tai. S. VI. 2. 1. 1 we read,[1484] 'the wife (of the sacrificer) holds on (to the cart), for the wife is the mistress of the household gear'. Manu IX. 11 uses the word 'pāriṇahya' (household gear) and states that the wife should be entrusted among other matters with the supervision over it. Jaimini[1485], according to Śabara, refers to

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1483. सूर्याया वहतुः प्रागात्सविता यमवासृजत् । अघासु हन्यन्ते गावोऽर्जुन्योः पर्युह्यते ॥ तुभ्यमग्रे पर्यवहन् सूर्यां वहतुना सह । पुनः पतिभ्यो जायां दा अग्ने प्रजया सह ॥ ऋ. X. 85, 13 and 38. These are almost the same as अथर्ववेद 14. 1. 13 and 14. 2. 1.

1484. पत्न्यन्वारभते पत्नी हि पारीणह्यस्येशे । तै. सं. VI 2. 1. 1 (in connection with आतिथ्येष्टि).

1485. स्ववत्तामपि दर्शयति । जै. VI 1. 16; पत्नी वै पारिणय्यस्येष्टे पत्यैव गतमनुमतं क्रियते । शबर. The printed text differs from the Tai. S. text. पारिणय्य would mean 'nuptial gifts'. The वि. र. p. 517 explains पारिणाय्यं (in Vas. 17. 46) as पारिणाय्यं परिच्छद आदर्शकङ्कणादि (paraphernalia, mirrors and bracelets). वि. चि. p. 142 reads ०कङ्कतिकादि (combs &c.). वि. सा. (folio 160) says: पारिणाह्यमुपस्करः । आदर्शकङ्कणताम्बूलकरण्डकादिरिति कल्पतरुः । परिणेयमिति पाठात्यौतकमित्यन्ये.

this passage of the Tai. S. for establishing that women do own certain property. Medhātithi[1486] on Manu VIII. 416 (cited above on p. 452) quotes this passage of the Tai. S. and argues that if Manu VIII. 416 (saying that whatever a wife earns is her husband's) were literally understood passages like the one in Tai. S. would have no scope and that therefore Manu simply means that though women may be owners they cannot dispose of the property independently. It appears from these ancient passages that the properties, which in early days were held to be owned by women, were presents made at the time of marriage (such as ornaments and costly dresses) and household articles that are generally under the control of women and that the later smṛti rules about the devolution of strīdhana in the female line arose from the peculiar nature of the articles over which dominion was conceded to women. This early state of things is indicated by some of the early sūtras. Āp. Dh.[1487] S. (II. 6. 14. 9) states the view of some predecessors (which Āp. himself does not approve) that the ornaments belong to the wife and also such wealth as came to her from her agnates (father, brother &c.). Baud. Dh. S. II. 2. 49 says that daughters get the ornaments of their mother and whatever else it is customary for them to get. Vas. 17. 46 prescribes that women (daughters) should divide the nuptial presents given to their mother. Śaṅkha (q. by Saṁ. Pr. p. 851) prescribes that in all forms of marriage ornaments and strīdhana should be given to the girl. It may be that Manu VIII. 416 only gives expression to an ancient opinion, that the literal meaning of that verse was given up long before and that all that Manu meant was that during coverture a woman was subject to the control of the husband as regards her strīdhana.

Three principal topics have to be discussed under strīdhana viz. what constitutes strīdhana, woman's dominion over her

1486. असति वा स्त्रीणां स्वाम्ये पत्न्यैवानुगमनं क्रियते पत्नी वै पारिणाह्यस्येशे इत्यादिश्रुतयो निरालम्बनाः स्युः । अत्रोच्यते । पारतन्त्र्याभिधानमेतत् । असत्यां भर्त्रनुज्ञायां न स्त्रीभिः स्वातन्त्र्येण यत्र क्वचिद्धनं विनियोक्तव्यम् । मेधा. on मनु VIII. 416.

1487. अलङ्कारो भार्याया ज्ञातिधनं चेत्येके । आप. ध. सू. II. 6. 14. 9; मातुरलङ्कारं दुहितरः सांप्रदायिकं लभेरन्नन्यद्वा । बौ. ध. सू. II. 2. 49; मातुः पारिणेयं स्त्रियो विभजेरन् । वसिष्ठ 17. 46. The वि. र. p. 521 explains आप. as 'ज्ञातिधनं चेति विवाहे यद्धनं यौतकाख्यं लब्धं तदपि भार्याया एव'. The मिता. on याज्ञ. II. 117 seems to have read this as a supplement to the preceding sūtra about the special share of the eldest son. The दायभाग IV. 2. 15 p. 82 and विवादचन्द्र p. 75 read पारिणाह्यं in Vas. and explain as परिणयनलब्धं धनं or विवाहकालीनं respectively.

strīdhana and inheritance to strīdhana. On each one of these topics great diversity of views prevails and the subject has become very complicated, as the Dāyabhāga remarks[1488].

Gautama contains three sūtras about the devolution of strīdhana, but he does not define or describe it.[1488a] Kauṭ. (III 2. p. 152) defines[1489] : 'means of subsistence and what could be tied on the body (i. e. ornaments and jewellery) constitute strīdhana. The means of subsistence should be fixed at 2000 (paṇas) as the maximum, while there is no limit to (what may be given) as *ābadhya* (ornaments &c.)'. This may be compared with a verse of Kāt. (902) and a similar[1490] verse of Vyāsa viz. 'the father, the mother, the husband, brother and kinsmen should give strīdhana to a woman according to their means up to two thousand (paṇas) except immovable property'. The Sm. C. and V. Mayūkha explain that this limit of 2000 applies to gifts made every year, but that if a gift is to be made once for all, then more may be given and even immovable property may be given.

The term strīdhana literally means 'woman's property'. But in the ancient smṛti works the word was restricted to certain special kinds of property given to a woman on certain occasions or at different stages of her life. Gradually such kinds of property went on increasing in extent and value. We have to follow this evolution of the meaning and content of the word strīdhana. One characteristic feature of strīdhana from the times of Gautama downwards has been that it devolved on females in the first instance. The oldest extant definition of it

1488. इत्यतिगहनमुक्तमप्रजःस्त्रीधनम् । दायभाग IV. 3. 42 p. 99.

1488a. For exhaustive treatment of strīdhana the following works may be consulted : Sir Gooroodass Bannerjee's 'Hindu Law of marriage and stridhana' (5th ed. of 1923) pp. 319-519, Dr. Jolly's T. L. L. on 'Adoption, Inheritance and Partition' (1885) pp. 226-270.

1489. वृत्तिराबध्यं वा स्त्रीधनम् । परद्विसहस्रा स्थाप्या वृत्तिः । आबध्यानियमः । अर्थशास्त्र III. 2.

1490. पितृमातृपतिभ्रातृज्ञातिभिः स्त्रीधनं स्त्रियै । यथाशक्त्या द्विसाहस्राद् दातव्यं स्थावरादृते । कात्या. q. by स्मृतिच. II 281, परा. मा. III. p. 548, व्य. मयूख p. 154; द्विसाहस्रः परो दायः स्त्रियै देयो धनस्य च । यच्च भर्त्रा धनं दत्तं सा यथाकाममश्नुयात् ॥ व्यास q. by स्मृतिच. II. p. 281, अपरार्क p. 752, दायभाग IV. 1. 10, बालम्भट्टी, व्य. मयूख p. 154. The परा. मा. III. p. 548 quotes बृहस्पति 'वृत्त्याङ्गनं च पर्याप्तं भौमांशं वा यदिच्छति ।'

in Dharmaśāstra works is that of Manu[1491] IX. 194: 'what (was given) before the nuptial fire, what was given on the bridal procession, what was given in token of love, what was received from her brother, mother or father, that is called the sixfold woman's property'. The Mit. on Yāj. II. 143 explains that the number six is intended to exclude a smaller number of the kinds of strīdhana and does not exclude a larger number. In IX. 195 Manu appears to mention one more kind viz. '*anvādheya*' (gift subsequent)'. Nār. (dāyabhāga, 8) has the same six kinds as Manu IX. 194, but reads 'bhartṛdāya' (the husband's gift) for Manu's 'what is given in token of affection', the latter being thus wider than Nārada's words. Yāj. (II. 143-44) enumerates[1492] the several kinds of strīdhana as follows: 'what was given (to a woman) by the father, mother, husband or brother or was received by her before the nuptial fire, or what was presented on her husband's marrying another wife (*ādhivedanika*) and the like—these are denominated strīdhana; so also what is given by the cognate relations (of the woman), the *śulka* (fee), and gifts subsequent to marriage'. The Mit. and most of its followers read 'ādhivedanikādyam ca', while Aparārka and the Dāyabhāga read 'ādhivedanikam caiva', the difference being that if one reads as the Mit. does, several other kinds not expressly enumerated can be easily included under strīdhana. But it should be noted that even without reading —'kādyam', Aparārka explains the verse in the same way as the Mit. does. Viṣṇu[1493] Dh. S. 17. 18 enumerates almost the same kinds of strīdhana as Yāj., but omits the word 'ādya'.

Among smṛti writers Kātyāyana gives the most elaborate treatment of strīdhana in about twenty-seven verses. He

1491. अध्यग्न्यध्यावाहनिकं दत्तं च प्रीतिकर्मणि । भ्रातृमातृपितृप्राप्तं षड्विधं स्त्रीधनं स्मृतम् ॥ मनु IX. 194. कात्या. (894) acc. to दायभाग (IV. 1. 4 p. 72), वि. र. 522 and चि. चि. p. 138 had practically the same verse (reading प्रीतितः स्त्रियै). The मिता. says, 'यत्पुनर्मनुनोक्तं ... ... स्त्रीधनस्य षड्विधत्वं तन्न्यूनसंख्याव्यवच्छेदार्थं नाधिकसंख्याव्यवच्छेदाय' । अध्यग्न्यध्यावाहनिकं भर्तृदायस्तथैव च । भ्रातृमातृपितृप्राप्तं षड्विधं स्त्रीधनं स्मृतम् ॥ नारद (दायभाग, 8).

1492. पितृमातृपतिभ्रातृदत्तमध्यग्न्युपागतम् । आधिवेदनिकाद्यं च स्त्रीधनं परिकीर्तितम् ॥ बन्धुदत्तं तथा शुल्कमन्वाधेयकमेव च । या. II. 143-144. On आधिवेदनिकं चैव, अपरार्क p. 751 says: चशब्द आद्यर्थः । तेन च स्त्रीधनान्तरपरिग्रहः । तद्यथा—कार्याः पत्न्यः समांशिकाः, माताप्यंशं समं हरेत् । स्वस्मादंशाच्चतुर्भागं, मातुः परिणाह्यं स्त्रियो विभजेरन्, अन्यदपि यत्स्त्रीस्वामिकं तत्स्त्रीधनमिति मन्वादिभिः परिकीर्तितम् ।. Against the reading चैव the बालम्भट्टी remarks 'अत्र आधिवेदनिकं चैवेति मान्यधृतपाठो न युक्तः, एवशब्दस्य वैयर्थ्यात्, न्यूनतापत्तेः, वचनान्तरविरोधापत्तेश्च ।'

1493. पितृमातृसुतभ्रातृदत्तमध्यग्न्युपागतमाधिवेदनिकं बन्धुदत्तं शुल्कमन्वाधेयकमिति स्त्रीधनम् । विष्णुधर्मसूत्र 17. 18.

defines several kinds of strīdhana enumerated by Manu, Yāj., Nār., and Viṣṇu (in all six) as follows[1494]: what is given to women at the time of marriage before the nuptial fire is declared by the wise to be *adhyagni*[1495] strīdhana. That again which a woman obtains when she is being taken (in a procession) from her father's house (to the bridegroom's) is declared to be *adhyāvahanika* stridhana. Whatever is given to a woman through affection by the father-in-law or mother-in law and what is received by her at the time of doing obeisance at the feet (of elders) is said to be *prītidatta* (gift through affection) strīdhana. That is declared to be *śulka* (bride's fee) which is obtained as the price of household utensils, of beasts of burden, of milch cattle, ornaments and slaves. Whatever is obtained by a woman after marriage from the family of her husband as also from the family of her (father's) kinsmen is said to be *anvādheya* (gift subsequent). According to Bhṛgu whatever is obtained by a woman after marriage through affection from her husband or from her parents is *anvādheya*'. It may be noted that Kātyāyana's definitions of adhyagni and adhyāvahanika are wide

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1494. 'विवाहकाले यत्स्त्रीभ्यो दीयते ह्यग्निसंनिधौ । तदध्यग्निकृतं सद्भिः स्त्रीधनं परिकीर्तितम् ॥ यत्पुनर्लभते नारी नीयमाना पितुर्गृहात् । अध्यावहनिकं चैव स्त्रीधनं तदुदाहृतम् ॥ प्रीत्या दत्तं तु यत्किंचित् श्वश्र्वा वा श्वशुरेण वा । पादवन्दनिकं चैव प्रीतिदत्तं तदुच्यते ॥ गृहोपस्करवाह्यानां दोह्याभरणकर्मिणाम् । मूल्यं लब्धं तु यत्किंचिच्छुल्कं तत् परिकीर्तितम् ॥ विवाहात्परतो यत्तु लब्धं भर्तृकुलात् स्त्रिया । अन्वाधेयं तदुक्तं तु लब्धं बन्धुकुलात् तथा ॥ ऊर्ध्वं लब्धं तु यत्किंचित् संस्कारात् प्रीतितः स्त्रिया । भर्तुः पित्रोः सकाशाद्वा अन्वाधेयं तु तद् भृगुः ॥ ऊढया कन्यया वापि भर्तुः पितृगृहेऽपि वा । भ्रातुः सकाशात् पित्रोर्वा लब्धं सौदायिकं स्मृतम् ॥ कात्या. 895-901. The मिता. quotes all except two (viz. 898 and 900), the दायभाग (IV) quotes all except 897, वि. र., (pp. 510, 524-525) reads all; दीपकलिका, दायभाग IV. 1. 5 p. 73, कुल्लूक on मनु 9. 194, वि. चि. p. 138 read नीयमाना हि (or तु) पैतृकात् in 896; अपरार्क p. 751, व्यव. नि. p. 465, विवादचन्द्र p. 77, वि. चि. p. 138 read तल्लावण्यार्जितमुच्यते for प्रीतिदत्तं तदुच्यते; दीपकलिका, व्यवहारसार p. 237, व्य. प्र. p. 543 read दोह्याभरणकर्मणाम्, वि. चि. p. 139 and व्य. मयूख p. 153 read यल्लब्धं स्वकुलात्तथा; मिता., स. वि. p. 380 read यल्लब्धं पितृकुलात्तथा. दायभाग reads भर्तुः सकाशात् पित्रोर्वा.

1495. Some of the words deserve explanation. अध्यग्नि is formed as an अव्ययीभाव from अधि + अग्नि acc. to पा. II. 1. 6 'अव्ययं विभक्तिसमीप०' and means अग्नौ अधिकृत्य अग्निसंनिधौ इत्यर्थः (बालम्भट्टी); आधिवेदनिकं अधिवेदनं धर्मपत्न्यां सत्यां रागत एव विवाहान्तरकरणं तत् निमित्तं अस्येति । सुबोधिनी and बालम्भट्टी (which relies on पा. V. 1, 38). Some read अध्यावहनिकं, others read अध्यावाहनिकम्. आवहन or आवाहन means पितृकुलाद् भर्तृकुलप्राप्तिः (मन्वर्थ on मनु IX. 194) तत्समयोपलब्धमध्यावहनिकं; अन्वाधेयं means अनु (विवाहानन्तरं) आधीयते इति (मन्वर्थ). Instead of प्रीतिदत्त some read लावण्यार्जित (obtained by her loveliness) which is explained by the वि. चि. (138) as लावण्यं शीलनैपुण्यादि । तथा च पादप्रणतायै शीलादिमत्यै वा स्त्रियै श्वशुरादिना दत्तं तृतीयं स्त्रीधनमित्यर्थः ।

enough to include gifts made even by strangers on those occasions.

These definitions given by Kātyāyana have been accepted by all digests including even the Dāyabhāga.

" That is known as *saudāyika* which is obtained by a married woman or by a maiden in her husband's or father's house from her brother or from her parents " (Kāt.). Some of the divergences in readings and in interpretation deserve to be noted. Acc. to the reading adopted by the Mit. *adhyāvahanika* includes all gifts made *by any one* when the newly married girl is taken from her father's house in a procession, while the reading adopted by the Dāyabhāga[1496] and some others (*paitṛkāt*) restricts the adhyāvahanika to gifts made by the father's or mother's family only. The V. R. (p. 523) includes under adhyāvāhanika also the gifts made by the father-in-law and others when the girl is taken back to her father's house and the V. C. (p. 138) says that it is what is obtained at the time of '*dvirāgamana*'. The Dāyabhāga[1497] (IV. 3. 19-20 p. 93) explains 'dohyābharaṇa-karmiṇām' differently as 'the gratification paid by house-builders or goldsmiths to induce her to press her husband to engage them' or as Vyāsa says 'what is given to a woman to induce her (cheerfully) to go to her husband's house'. The Sm. C. and V. P. explain śulka as the price of the articles which the bridegroom was in the habit of presenting to the bride at the time of marriage or when he started a house.[1498] The V.

1496. पैतृकादित्येकशेषेण पितृमातृकुलाद् यल्लभते धनं भर्तृगृहं नीयमाना तदध्यावाहनिकम्। दायभाग IV. 1. 6 p. 73. 'भर्तृगृहाद्यदा पितृकुलं नीयते तदा श्वशुरादिभिर्दत्तमध्यावाहनिकमिति मेधातिथिः तदपि ग्राह्यं न्यायसाम्यात्।' वि. र. pp. 522-523; द्विरागमनकाले यत्कुतोऽप्यवाप्तं तदध्यावाहनिकमित्यर्थः। वि. चि. p. 138. The printed editions do not contain the comment of मेधातिथि on मनु IX. 194 and the following verses.

1497. गृहादिकर्मिभिः शिल्पिभिस्तत्कर्मकरणाय भर्त्रादिप्रेरणार्थं स्त्रियै यदुत्कोचदानं तच्छुल्कं तदेव मूल्यं भवत्यर्थत्वात्। व्यासोक्तं वा यथा। यदा नेतुं भर्तृगृहे शुल्कं तत् परिकीर्तितम्। भर्तृगृहगमनार्थमुत्कोचादि यद्दत्तं तच्च मात्रादिभिर्निशिष्टम्। दायभाग IV. 3. 20-21 p. 93.

1498. The change in the meaning of *śulka* is interesting. One meaning of śulka is 'tax or toll on merchandise'. Vide Viṣṇu Dh S. III. 29, Yāj. II. 173, 261, Vas. 19. 37. Pāṇini V. 1. 47 uses that word in that sense (तदस्मिन्वृद्ध्यायलाभशुल्कोपदा दीयते) and the Kāśikā explains it as रक्षानिर्वेशो राजभागः शुल्कः. Another sense is 'the fee paid to the bride or her parents by the bridegroom in consideration of marriage'. The word occurs in

(*Continued on the next page*)

Nir. (p. 468) states that śulka has two senses ; (1) what is given as the price of the girl to the guardians of the girl which goes to the mother and brother (on her death) ; (2) what is given (by the bridegroom) as the price of the ornaments for the girl and of the household gear.[1499] Another verse of Kāt. (904) has been quoted by many writers, which restricts the literal sense of the word strīdhana, 'over that wealth that is obtained by a woman by mechanical arts (such as spinning) or from a stranger through affection, the husband has ownership.

(*Continued from the last page*)

Gaut. 28. 23 and in Saṅkha (*svayaṁ śulkam vodhā*) q. by V. R. p. 521. In very ancient days there appears to have been a practice to offer in some cases considerable wealth to the father of the bride to induce him to give her in marriage. Ṛg. I. 109. 2 refers to this : 'O Indra and Agni ! I have heard that you are more liberal than even an unsuitable (or deficient) son-in-law or even a brother-in-law'. Yāska (VI. 9) in explaining this verse remarks that the southern people speak of the husband of the bride that i purchased as 'vijāmātṛ' (विजामाता इति शश्वद् दाक्षिणाजाः क्रीतापतिमाचक्षते असुसमाप्त इव वरोभिप्रेतः). But this verse also shows that the bride's brother (*śyāla*) had to give wealth to his sister's husband. Vide H. of Dh. Vol. II. pp. 503–506 for passages about the sale and purchase of girls in marriage from ancient times right down to 1800 A. D. Though sometimes girls were purchased for marriage, popular feeling gradually asserted itself against this. In the Vanaparva (115. 23) Gādhi claims as the custom of his family one thousand horses of the best kind from Ṛcīka when the latter preferred his suit for the hand of Gādhi's daughter (उचितं नः कुले किंचित् पूर्वैर्यत्संप्रवर्तितम् । एकतः श्यामकर्णानां पाण्डुराणां तरस्विनाम् । सहस्रं वाजिनां शुल्कमिति विद्धि द्विजोत्तम ॥). Vide Anuśāsana 4 12 (for a similar statement) and 2. 31, Manu III. 51 forbids the taking of even a small gratuity through greed by the father when giving away his daughter in marriage and says that if he does so he would be guilty of the sale of his child and in III. 54 (almost the same as Anuśāsana 46. 1–2) Manu says that when agnates do not appropriate to themselves the gratuity paid (by the bridegroom) for the bride but hand it over to the bride then it is not sale, but it is honour shown to the girl and is merely kindness to her. The Mit. defines śulka as the gratuity after getting which the girl is given. The V. C. p. 139 defines it as what is obtained from the husband on condition of furnishing household gear &c. 'गृहोपस्करादिकरणोपाधिना स्त्रिया गृहपतितो यल्लब्धं तच्छुल्कमित्यर्थः'.

1499. तत्र शुल्कं द्विविधं कन्याविक्रयमूल्यत्वेन कन्याबन्धुभ्यो दत्तमेकम् । तन्मातृगामि भ्रातृगामि वा । कन्याभूषणगृहोपकरणमूल्यत्वेन दत्तमपरं शुल्कम् । तद्भ्रातृभिरेवादेयम् । व्यव. नि. p. 468.

the rest is declared to be strīdhana'.[1500] The prima facie view (*pūrvapakṣa*) in Jai. VI. 1. 12 urges that what a woman gets by serving cooked food or by cutting clothes does not belong to her. The gifts from strangers here referred to are other than those made by a stranger before the nuptial fire or at the time of the bridal procession. This definition makes it clear that what is obtained even from a stranger by a maiden or by a woman who is a widow at the time of the gift is pure strīdhana. Devala says, 'maintenance (what was given for maintenance), ornaments, śulka (bride's gratuity), the profits of money-lending are a woman's strīdhana. She alone is entitled to enjoy it and the husband is not entitled to enjoy it except in the case of distress'.[1501] Manu IX. 200 states, 'the heirs of the husband should not divide (among themselves) the ornaments worn by women during the lifetime of their husband; if they divide them they incur sin'. In the printed editions of Manu there is no comment of Medhātithi on this verse, but the V. R. (p. 509), V. C. p. 139, Dāyatattva p. 184 all say that acc. to Medhātithi even ornaments, though not donated expressly, become strīdhana, if worn with the husband's consent.[1502] According to the Vaijayantī such ornaments should be assigned to the share of the woman's husband so that she alone might put them on and that it is not meant that such ornaments are not to be taken into account at all at the time of partition.

1500. प्राप्तं शिल्पैस्तु यद्वित्तं प्रीत्या चैव यदन्यतः । भर्तुः स्वाम्यं तदा तत्र शेषं तु स्त्रीधनं स्मृतम् ॥ कात्या. q. by दायभाग IV. 1. 19–20 p. 76, स्मृतिच. II. p. 281, परा. मा. III. 550, व्य. मयूख p. 154. दायभाग explains: अन्यत इति पितृमातृभर्तृकुलव्यतिरिक्तात् यल्लब्धं शिल्पेन वा यदर्जितं तत्र भर्तुः स्वाम्यं स्वातन्त्र्यम्, अनापद्यपि भर्ता ग्रहीतुमर्हति तेन स्त्रिया अपि धनं न स्त्रीधनमस्वातन्त्र्यात्. 'यदनया भक्तोत्सर्पणेन वा कर्तनेन वा धनमुपार्जितं तेन यक्ष्यत इति । उच्यते तदप्यस्या न स्वम् ।' भाष्य on जै. VI. 1. 12.

1501. वृत्तिराभरणं शुल्कं लाभश्च स्त्रीधनं भवेत् । भोक्त्री च स्वयमेवेदं पतिर्नार्हत्यनापदि ॥ देवल q. by अपरार्क p. 755, स्मृतिच. II. p. 283, दायभाग IV. 1. 15 p. 75, वि. र. p. 512, व्य. मयूख p. 56, वि. चि. p. 141. Some read वृद्धिः (व्य. प्र. p. 545 does so). लाभ is variously explained. लभ्यत इति लाभः । एतदुक्तं भवति । पार्वत्यादिप्रीत्यर्थं व्रतादौ यत् स्त्रिया लभ्यते तदपि स्त्रीधनमिति । स्मृतिच. II. p. 283; व्य. प्र. p. 545 and मदनरत्न follow this, 'लाभो बन्धुभ्यो लब्धम्' वि. र. p. 512, वि. चि. p. 141; 'वृत्तिर्जीवनार्थं पित्रादिदत्तं लाभो वृद्धिः' व्य. मयूख p. 156.

1502. पत्यौ जीवति यः स्त्रीभिरलङ्कारो धृतो भवेत् । न तं भजेरन् दायादा भजमानाः पतन्ति ते ॥ मनु IX. 200, which is almost same as विष्णुधर्मसूत्र 17. 22. पत्युरननुज्ञातेना-(ज्ञातेना?)प्यदत्तोऽप्यलङ्कारो यो मण्डनार्थं धृतः सोऽपि दायादैर्न हर्तव्य इति मेधातिथिरिति प्रकाशः । वि. र. p. 509; पत्युरदत्तोऽपि तदनुज्ञया परिहितोऽप्यलङ्कारस्तावतैव भार्यायाः स्वीयो भवतीति मेधातिथिः । वि. चि. p. 139 and दायतत्त्व p. 184.

Saudāyika is not a special kind of strīdhana. It is rather a comprehensive term for several kinds of strīdhana as the definition given by Kāt. shows and as the V. C. (p. 139) expressly states[1503]. It is almost synonymous with strīdhana in the technical sense. Acc. to most writers, it is wealth received by a woman, whether as a maiden or as a married woman, in her father's or husband's house from her parents or relatives of the father and mother. The Sm. C. II. p. 282 and V. R. p. 511 hold that saudāyika is all wealth obtained by a woman whether as a maiden or as a married woman from her mother, father or paternal relatives only, while the Dāyabhāga IV. 1. 23 pp. 76-77 and V. C. hold that *saudāyika* includes also all property donated by the husband except immovable property, which latter she cannot alienate even after her husband's death. There is a verse of Vyāsa[1504] that defines saudāyika similarly, 'whatever is obtained by a woman as a maiden at the time of marriage and after marriage from the house of her father or husband is termed saudāyika.' The word 'saudāyika' is derived from 'sudāya' and means, according to the Dāyabhāga IV. 1. 22 p. 76, 'received from affectionate kindred'. The Amarakośa says that 'sudāya' means 'gifts of yautaka and the like' and that saudāyaka is merely a derivative without change of meaning.[1505]

Another word requiring explanation is '*yautaka*'. It occurs in Manu IX. 131, 'whatever is the yautaka of the mother goes to the maiden daughter' (and not to the married daughter or son). So yautaka seems to be a synonym for strīdhana in

1503. एवं स्त्रीधनानि भवन्ति। एतद्वेव स्त्रीणां सौदायिकं तथा च कात्यायनः। ऊढया ... भवेत्। पत्युरित्यत्रापि गृहे इति सम्बन्धः। ... भ्रातुरित्युपलक्षणम्। तेन कन्यया वा ऊढया वा पितृतो वा तत्कुलतो वा पतिकुलतो वा यल्लब्धं तत्सर्वं तस्याः सौदायिकमित्यर्थः। वक्ष्यमाणवृत्त्याद्विकमप्येतत्प्रपञ्चः। वि. चि. p. 139; दायभाग IV. 1. 21 reads भर्तुः सकाशात् पित्रोर्वा; 'भर्तुः सकाशादिति कल्पतर्वादौ पाठः' व्य. प्र. p. 543.

1504. यत्कन्यया विवाहे च विवाहात्परतश्च यत्। पितृभर्तृगृहात्प्राप्तं धनं सौदायिकं स्मृतम्॥ व्यास. q. by स्मृतिच. II. p. 282, स. वि. p. 378.

1505. सुदायसम्बन्धिभ्यो लब्धं सौदायिकम्। दायभाग IV. 1. 22; यौतकादि तु यद्देयं सुदायो हरणं च तत्। अमरकोश, ननु 'सौदायिकं तु यद्देयं सुदायो भरणं च तत्' इति निघण्टुपाठात् कथं सौदायिकशब्दोऽत्र प्रयुक्तः। स्वार्थे तद्धितान्ततयेत्यनवद्यम्। स्मृतिच. II. p. 282. The quotation from Amara seems to be corrupt as printed by Mr. Gharpure; the Mysore edition correctly reads यौतकादि तु यद्देयं सुदाय इति निघण्टुपाठात् (vol. III. 2. p. 655). 'सुदाय एव सौदायिकं स्वार्थिकष्ठञ्। स्वदायतो लब्धमिति वा। स्वदाय(सुदाय?)सम्बन्धिभ्यो लब्धमिति तु भाव्यः' बालम्भट्टी on या. II. 143.

the technical sense. The Sm.[1506] C. II p. 285, Madanaratna (folio 105 b) and V. Mayūkha remark 'yautaka is that wealth that is received as a gift from anybody by a woman while she is seated together with her husband at the time of marriage and the like'. It is derived from *yuta* (joined). It should, however, be noted that Yāj. II. 149 employs the word *yautaka* as an adjective in the sense of 'separated' and that Medhātithi on Manu IX. 131 explains 'yautaka' as the separate property of a woman, her strīdhana. The Sm. C. II. p. 285 remarks that Devasvāmī derived 'yautaka' from 'yu' (to separate) and held it to mean 'wealth obtained from the family of the woman's father which is separate in its characteristics'. The V. C. p. 142 and Vivādacandra p. 74 read 'yautuka' and the former explains it as gifts from the father and the like at the time of marriage. The Dāyatattva (p. 186) states that both forms 'yautaka' and 'yautuka' are in vogue and relies on Vācaspati and Rāyamukuṭa in support.

Kauṭ. (III. 2. p. 153) names śulka, anvādheya, ādhivedanika and bandhudatta as kinds of strīdhana.

The above are the principal smṛti texts on the question of what constitutes strīdhana. It will be seen that the smṛtis only enumerate and describe certain kinds of property as strīdhana, which word is not used by them in the etymological sense of 'all kinds of property possessed by a woman'. They do not attempt a comprehensive definition of strīdhana. From the texts of the smṛtis it follows that strīdhana was a technical term, which at first included only six kinds of property, then nine and ultimately by the time of Kātyāyana it included all property (whether movable or immovable) obtained by a woman, either as a maiden or at marriage or after marriage,

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1506. यौतकं विवाहादिकाले एकत्रासनोपविष्टाभ्यां लब्धम् । अत एवोक्तं निघण्टुकारैर्युतयोर्यौतकमिति । मदनरत्न folio 105 b ; व्य. मयूख p. 158 quotes the मदनरत्न; वि. र. p. 517 explains 'यौतकमत्र परिणयनकाले पित्रादिभिः स्त्रियै दत्तम्', परा. मा. III. p. 552 explains as पितृकुललब्धम्. यौतकं समानासनोपवेशनप्रत्यासत्त्योर्वधूवरयोर्विवाहादौ येन केनचित्समर्पितं धनं तद्वधूवरयोर्युतयोर्यौतकं मतमिति निघण्टुकारोक्तत्वात् । ... देवस्वामी तु पितृगृहाल्लब्धं भर्तृगृहाल्लब्धापेक्षया पृथग्धनतया यौतकं मातृधनं (भ्रातृधनं ?) मेत्याह । तच्चिन्त्यम् । पक्षद्वयस्यापि कल्पनामात्रत्वात् । स्मृतिच. II. p. 285. Vide व्य. प्र. p. 548 for most of these being brought together. व्यव. नि. p. 463 explains यौतकं as मातृकुललब्धम् . 'यौतकशब्दः पृथग्भावेन च वर्तते । तत्र हि तस्या एव केवलायाः स्वाम्यम् । अन्ये तु सौदायिकमेव तस्याः स्त्रीधनं तत्र हि तस्याः स्वातन्त्र्यम् । मेधा. on मनु IX. 131 ; वाचस्पतिमिश्ररायमुकुटधृताद् यौतुकं यौतकमपि साधु । परिणयनकालः परिणयनपूर्वापरीभूतकालः स च वृद्धिश्राद्धारम्भपर्यन्तं विवाहनाम्नो विवाहतत्त्वे विवृतः । दायतत्त्व p. 186.

from her parents or the family or relatives of the parents or from the husband and his family (except immovable property given by the husband) and that what was obtained by a woman *after her marriage* by her own labour or from strangers did not become strīdhana. Most smṛtis employ the word 'datta' (donated), but Kāt. and Vyāsa sometimes use the word 'obtained' (*prāpta* or *labdha*), which is ordinarily wider than 'datta'. But it is clear that the commentators do not expressly say that 'obtained' includes 'inherited', though from their general remarks to be quoted below it is arguable that they probably included inherited property under property obtained.

This is strīdhana in a technical sense.

It is now necessary to find how strīdhana was defined by the several commentaries and digests that are held authoritative in the several schools. This is a most important matter for practical purposes, since the courts have to follow the opinions of commentators[1507] that are authoritative in each school and are not at liberty to put their own construction upon ancient smṛti texts, if such construction would run counter to the express opinions of the authoritative commentators. First then comes the Mitākṣarā. Its gloss on Yāj. II. 143 may be translated as follows[1508]: 'whatever is given by the father, mother, husband and brother; what was presented by the maternal uncle and the like at the time of marriage before the nuptial fire; and *ādhivedanika*, that is, gift made (by the husband) at the time of marrying a second wife as will be described subsequently in the words 'he should give to the wife that is superseded' (Yāj. II. 148); by the word 'ādya' (meaning 'and the like') is indicated property that is obtained by succession, purchase, partition, seizure or finding—all this is declared by Manu and others to be strīdhana. The word strīdhana is employed here in its etymological sense and not in a technical sense, since, when the etymological sense is possible, it is improper to resort to the technical sense.' The Mitākṣarā expanded the

1507. Vide *Collector of Madura v. Mootoo Ramlinga* 12 Moo. I. A. 397, 436, quoted in *Atmaram v. Bajirao* 62 I. A. 139 at p. 143.

1508. पित्रा मात्रा पत्या भ्रात्रा च यद्दत्तं यच्च विवाहकालेऽग्निमधिकृत्य मातुलादिभिर्दत्तं, आधिवेदनिकं अधिवेदननिमित्तं अधिविन्नस्त्रियै देयमिति वक्ष्यमाणम् । आद्यशब्देन रिक्थक्रयसंविभागपरिग्रहाधिगमप्राप्तम् एतत्स्त्रीधनं मन्वादिभिरुक्तम् । स्त्रीधनशब्दश्च यौगिको न पारिभाषिकः । योगसम्भवे परिभाषाया अयुक्तत्वात् । मिता. on या. II. 143. As against the last sentence of the Mit. may be compared the maxim (*nyāya*) 'रूढिर्योगमपहरति' (relied upon in परा. मा. I. 1. p. 300).

definition of strīdhana so as to include under it the five kinds of property of which a man becomes owner in various ways according to Gautama X. 39. The result is that, according to the Mit., property of any description belonging to a woman becomes strīdhana even if it be inherited by her from a male as a widow or as a mother or even if it be obtained at a partition by a wife or mother (acc. to Yāj. II. 115 or 123 respectively). The same interpretation of the word 'ādya' has been accepted by several works, such as the Madanapārijāta (p. 671), the S. V. (p. 379), V. P. (p. 542), the Bālambhaṭṭī. Aparārka without reading 'ādya' gave the same explanation of 'ca' as stated above (on p. 773). On the other hand, the Dāyabhāga gave a restricted meaning to the word. Jīmūtavāhana reads Yāj. II. 143 as '*ādhivedanikam caiva*', quotes the verse of Devala (in note 1501), remarks that strīdhana is not restricted to the six kinds of Manu (IX. 194) but includes other kinds mentioned by other smṛtis and finally[1509] observes: 'that alone is strīdhana which a woman has authority to donate, sell or enjoy independently of her husband's control'. The Dāyabhāga does not expressly state the kinds of property that a woman can dispose of independently of her husband, but immediately after defining strīdhana it quotes the texts of Kāt. (about earnings from mechanical arts and gifts from strangers) and Nār. (IV. 28), 'what has been given to a wife by her loving husband, she may spend or give away as she likes even after his death excepting immovables'. From this it follows that, according to the Dāyabhāga, all gifts from relations except a gift of immovable property made by the husband and gifts from even strangers made before the nuptial fire or on the bridal procession constitute strīdhana, but property inherited by a woman or obtained on partition, gifts from strangers (other than the two kinds noted above) and property acquired by her by mechanical arts or by her labour are not strīdhana. The Dāyatattva closely follows the Dāyabhāga.

The Sm. C. does not give a defintion of strīdhana, but it does not adopt the interpretation of the word 'ādya' given by

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1509. तदेवमव्यवस्थितसंख्यस्त्रीधनकीर्तनाच्च षट्संख्या विवक्षिता किं तु स्त्रीधनकीर्तनमात्रपराणि वचनानि। तदेव च स्त्रीधनं यद् भर्तुः स्वातन्त्र्येण दानविक्रयभोगान्कर्तुमधिकरोति। ... स्थावरेपि भर्तृदत्तमात्रे स्त्रिया दानाद्यनधिकारः। तदाह नारदः। भर्त्रा प्रीतेन यद्दत्तं स्त्रियै तस्मिन्मृतेपि तत्। सा यथाकाममश्नीयाद् दद्याद्वा स्थावरादृते। भर्तृदत्तविशेषणाद् भर्तृदत्तस्थावरादृते अन्यत् स्थावरं देयमेव भवति। दायभाग IV. 1. 18 and 23. श्रीकृष्ण says 'स्त्रीणां स्वातन्त्र्येण विनियोज्यं स्त्रीधनमित्यर्थः।'

the Mit. Therefore it may be said that it is in line with the Dāyabhāga. The Par. M. III. p. 547[1510] (another Madras authority) appears to follow the Mit., since it says: "'ādya' includes 'ādhivedanika' and what is acquired by inheritance, sale and the like." The Vivādacintāmaṇi (the leading authority in Mithilā) does not define strīdhana in general, but enumerates the several kinds of strīdhana described by Manu, Yāj., Viṣṇu, Kāt., and Devala and so is on a par with the Dāyabhāga. The V. Mayūkha divides strīdhana into two kinds, *pāribhāṣika* (technical) and *apāribhāṣika* (non-technical). The former comprises properties expressly stated to be strīdhana by the sages, while the latter includes all other property belonging to a woman (except what is called technical) and acquired by her by partition or cutting (sewing or other mechanical arts).[1511] This division is peculiar to the V. Mayūkha. The Vīramitrodaya (the paramount authority in the Benares school) agrees with Mit. as stated above.

It is beyond the scope of this work to go deeply into modern caselaw. But it is necessary to show how the Indian Courts have in modern times dealt with strīdhana as defined by the commentators. It may be said at once that the inclusion by the Mit. of property inherited by a woman or obtained at a partition under strīdhana has been totally discarded by the Privy Council for all provinces in India except Bombay[1512]. A woman may inherit property from a male, such as from her husband, father or son or she may inherit property from a female, that is, from her mother, daughter &c. Both these kinds of property

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1510. आद्यशब्देन अध्यावाहनिकक्रय(रिक्थ ?)क्रयादिप्राप्तं च । परा. मा. III. p. 547.

1511. यत्तु विभजेरन्सुताः पित्रोरूर्ध्वं रिक्थमृणं सममिति याज्ञवल्क्योक्तं तत्पारिभाषिकातिरिक्तविभागकर्तनादिलब्धपरम् । व्य. मयूख p. 160.

1512. Vide *Sheo Shankar v. Debi Sahai* L. R. 30 I. A. 202 (a case from Allahabad) for the proposition that according to the law of the Benares school even property inherited by a woman from a female is not her strīdhana and does not pass to her heirs. The principal grounds for the decision were that as regards property inherited by a female from males the rule deducible from the gloss of Vijñāneśvara had already been discarded and that even as to property inherited from a female the same rule had been applied in most High Courts (p. 208). Vide also *Balwantrao v. Baji Rao* L. R. 47 I. A. 213, 223 where the Privy Council approve of the Bombay High Court's decision in *Bhau v. Raghunath* 30 Bom. 229 that a daughter succeeding to her father takes the property absolutely as strīdhana in the Bombay Presidency.

are strīdhana according to the Mit., but the Privy Council has held as to both these kinds that they are not strīdhana; e. g. if a daughter inherits property from her father or inherits the strīdhana property of her mother, it does not become her strīdhana, that on the death of the daughter, the property does not pass to *her* heirs, but to the next heir of the person from whom she inherited it. The Bombay school makes a distinction. If a woman enters a family by marriage and then inherits to a male of that family (as e. g. a widow succeeding to her husband, a mother to her son or a predeceased son's widow to her father-in-law), the property she inherits is not her strīdhana, she takes only a limited estate in it and on her death it passes to the next heir of the male from whom she inherited. But if a woman inherits from a male belonging to the family in which she was born (e. g. a daughter succeeding to her father, a sister to her brother) or if a woman inherits property from a female, the property so inherited becomes her strīdhana (in Bombay). As to property acquired by a wife or mother on partition[1513], it has been held by the Privy Council that it is not strīdhana even in provinces governed by the Mitākṣarā (including Bombay).

Kāt. (903) declares:[1514] 'whatever was given to a woman for wearing only on some occasion (or on condition) or with fraudulent intent by the father, brother or husband is not held to be strīdhana.' The idea is that if the father or husband gives some ornament to his daughter or wife for wearing on some special occasion (*upādhi*) or if a father or husband in fraud of his co-parceners gives some family property to his daughter or wife it cannot become strīdhana.

Dominion over strīdhana.—What is strīdhana and what dominion a woman has over strīdhana depend on three things, viz. the source of acquiring the property, her status at the time of acquisition (i. e. whether she was a maiden or a married woman whose husband was living or a widow), the school of law by which she is governed. Certain verses of Kāt. and Nār. are the principal texts on this subject. Kāt. (905–907, 911)

1513. Vide *Debi Mangal Prasad v. Mahadeo Prasad* L. R. 39 I. A. 121, 131–132 (about the share of immovable property on partition not being stridhana and not passing on her death to her stridhana heirs).

1514. यत्तु उत्सवादावेव धार्यमित्येवमाद्युपाधिना अलङ्कारादि दत्तं यच्च छायाद्वा-विप्रलम्भार्थं दत्तं तत्स्त्रीधनं न भवतीत्याह कात्यायनः । यत्तु सोपाधिकं दत्तं यच्च योगवशेन वा । पित्रा भ्रात्राथवा पत्या न तत्स्त्रीधनमिष्यते । स्मृतिच. II. p. 281. The verse is quoted by परा. मा. III. p. 549, व्य. मयूख p. 154 (reads यत्तु सोपधि यद्दत्तं).

says :[1515] 'on obtaining wealth of the *saudāyika* kind it is declared (lit. desired) that women have independent power over it, since it was given by them (the kindred) as support (or maintenance) in order that they (women) may not be reduced to a terrible (or wretched) condition. It has been declared that women always have independence in *saudāyika* property as regards sale or gift at their pleasure and even in immovables (if saudāyika). A woman, when her husband is dead, may deal with the gift (of movables) given by the husband as she pleases, but she should preserve it as long as he is alive or she may spend it on his family. Neither the husband nor the son, nor the father nor the brothers have power to use or alienate the strīdhana of a woman'. The verse of Kāt. about property acquired by labour or about the gift from strangers through affection and that of Nārada about the gift of immovable property made by the husband have already been quoted. From these texts it follows that a Hindu woman during her maidenhood[1516] could dispose of her strīdhana property of every description at her pleasure, that during her widowhood she could dispose of every kind of strīdhana including movable property given by the husband but not immovable property given by him and that a married woman whose husband was living could dispose of at her pleasure only that kind of property called *saudāyika* (i. e. gifts from relations except those made by the husband). Under modern decisions the distinction between saudāyika and

1515. सौदायिकं धनं प्राप्य स्त्रीणां स्वातन्त्र्यमिष्यते । यस्मात्तदानृशंस्यार्थं तैर्दत्तमुपजीवनम् ॥ सौदायिके सदा स्त्रीणां स्वातन्त्र्यं परिकीर्तितम् । विक्रये चैव दाने च यथेष्टं स्थावरेष्वपि ॥ भर्तृदायं मृते पत्यौ विन्यसेत् स्त्री यथेष्टतः । विद्यमाने तु संरक्षेत् क्षपयेत्तत्कुलेऽन्यथा ॥ न भर्ता नैव च सुता न पिता भ्रातरो न च । आदाने वा विसर्गे वा स्त्रीधने प्रभविष्णवः ॥ कात्या. q. अपरार्क p. 752 (except भर्तृदायं &c.), स्मृतिच. II, p. 282, दायभाग IV. 1. 22 and 24 and व्य. मयूख p. 155 (except भर्तृदायं &c.), वि. र. pp. 510–11, 514 (all), वि. चि. pp. 139–140. On आनृशंस्यार्थं वि. र. says, 'आनृशंस्यमदारुणता तेन यस्मादियं वित्ताभावाद्दारुणा न भवत्वेतदर्थम्' (p. 511); 'आनृशंस्यार्थं अनुकम्पार्थं' (श्रीकृष्ण). On सदा the स्मृतिच. says 'पत्यौ विद्यमानेपि स्वातन्त्र्यमुक्तं सदेत्यभिधानात्.' On भर्तृदायं the स्मृतिच. says 'भर्तृदायो भर्तृदत्तम् । तन्मध्ये तु तदनन्तरोक्तपादद्वयेणाविद्यमाने पत्यौ स्वातन्त्र्यमुक्तम् । विद्यमाने तु संरक्षेदित्यभिधानात् । संरक्षेद्भर्तृदत्तं भर्त्रनुज्ञया विना न विन्यसेदित्यर्थः'. वि. र. p. 511 and वि. चि. p. 140 take भर्तृदाय to mean husband's own property and the former says that हलायुध and पारिजात explained it as स्त्रीधन given by the husband.

1516. So long as a Hindu maiden is a minor she cannot alienate her property or dispose of it by will ; only her guardian can alienate it for purposes laid down in Hunooman Pershad's case ; vide 6 Moo. I. A 393 (cited above on p. 449).

non-saudāyika is retained,[1517] but the distinction between saudāyika given by the relations and that given by the husband is not kept.[1518] Now the woman's power to dispose off as she likes depends on the question whether the gift was meant to pass an absolute estate or a limited estate even if the husband was the donor. During marriage when the husband is living her dominion depends under modern law upon the character of the strīdhana. If it is of the kind called saudāyika she can dispose of it by sale, gift or will as she likes without her husband's consent; but as to other kinds of strīdhana property (such as gifts from strangers, property acquired by mechanical arts or property inherited) she cannot dispose of it without her husband's consent. If she disposes of it without such consent the alienation is void. According to the D. B. IV. 1. 20 property acquired by a married woman by mechanical arts or by gift from a stranger is subject to the husband's dominion during his life and may be taken by him even when there is no distress. No one else (except the husband) has got control over even such strīdhana. After the husband's death, she can dispose of even non-saudāyika strīdhana as she likes. But even as regards saudāyika, the texts concede certain rights to the husband in certain circumstances. Yāj. II. 147 says: 'the husband is not liable to return to the wife her strīdhana taken (i. e. used) by him in a famine, for (indispensable) religious acts, in disease, or when imprisoned (by the creditor or by the king or an enemy).[1519]

1517. Vide *Bhau v. Raghunath* 30 Bom. 229 (where it was held that property inherited by a woman from her father could not be bequeathed by her without the consent of the husband who survived her). Bequests to a woman are on the same footing as a gift for the purposes of strīdhana. Vide *Damodar v. Purmanandas* 7 Bom. 155.

1518. Vide *Shalig Ram v. Charanjit Lal* 57 I. A. 282, 289.

1519. दुर्भिक्षे धर्मकार्ये च व्याधौ संप्रतिरोधके । गृहीतं स्त्रीधनं भर्ता न स्त्रियै दातुमर्हति ॥ या. II. 147, on which मिता. says: प्रकारान्तरेणापहरन् दद्यात् । भर्तृव्यतिरेकेण जीवन्त्याः स्त्रिया धनं केनापि दायादेन न ग्रहीतव्यम् ।; some like व्य. म. p. 546 read नाकामो दातुम्; वि. र. p. 513, वि. चि. p. 141, विवादचन्द्र p. 73 regard संप्रतिरोधके as an adjective of व्याधौ; 'संप्रतिरोधकेति व्याधिविशेषणं कार्यानुष्ठानबाधक इति तदर्थः। वि. चि.; 'नाकामो दातुमर्हतीत्यपि दारिद्र्याविकृतदानासामर्थ्ये बोध्यम् । सति तु सामर्थ्ये दुर्भिक्षादिगृहीतमप्यवश्यं देयम् । एतावतैव वचनोपपत्तौ सामर्थ्येऽप्यदानमिच्छयेत्यस्य कल्पयितुमनर्हत्वात् । पतिग्रहणाद्व्यापत्स्वपि पत्युरेव पत्नीधनग्रहणाधिकारः । प्रतिदानं चेच्छया नान्यथेति ज्ञेयम् । व्य. म. p. 546.

Kāt. (914)[1520] has a similar verse which says that he may return strīdhana wealth if he chooses to do so when it is used by him in a disease or in calamities or when harassed by creditors. Kauṭ. (III. 2 p. 152) is closely similar to Yāj. and adds that the woman can spend it without blame for the maintenance of herself, her son and daughter-in-law or when the husband has gone abroad without making provision for the maintenance of these. Kauṭ (III. 2. p. 152) further provides[1521] that there should be no complaint (by the wife) as regards the expenditure of strīdhana made more than three years before by joint action of the husband and wife when they have given birth to two children (or to twins) and when the marriage has been in the most approved forms (*brāhma* and the other three), that when strīdhana has been expended by (the husband and wife) that are married in the *gāndharva* or *āsura* form both should be made to restore it with interest and that what is expended when the marriage is in the *rākṣasa* or *paiśāca* form the expenditure of strīdhana should be dealt with as theft. The meaning of 'mithunaṃ prajātayoḥ' and 'trivarṣopabhuktam' in Kauṭ. is not quite clear. It is probable that Kauṭilya lays down a rule of limitation. If more than three years are allowed to pass without complaint, then no complaint made later (than three years after the expenditure) would be entertained. So also if there be no children of the marriage and the husband expends strīdhana without objection by the wife then also no complaint would be entertained as the restraint on alienation of strīdhana by the husband and wife was meant for the benefit and advancement of the children. None of the later smṛtis like those of Yāj., Nār. or Kāt. makes these distinctions and so Kauṭ. probably represents an early stage in the evolution of the husband's dominion over strīdhana. These later smṛtis hold that the husband and wife may be entirely separate as regards their properties and as a general rule the husband's debts are not binding on the wife's properties nor are the wife's separate debts binding on the husband or his properties (Yāj. II. 46,

1520. व्याधितं व्यसनस्थं च धनिकैर्वोपपीडितम्। ज्ञात्वा विसृष्टं पत्नीस्वं दद्यात्स्वेच्छया तु सः॥ कात्या. q. by अपरार्क p. 755, स्मृतिच. II. p. 283, वि. र. p. 513, वि. चि. p. 141; तद्वात्मपुत्रस्नुषाभर्मणि प्रवासाप्रतिविधाने च भार्याया भोक्तुमदोषः। प्रतिरोधकव्याधि-दुर्भिक्ष-भयप्रतीकारे धर्मकार्ये च पत्युः। अर्थशास्त्र III. 2 p 152.

1521. सम्भूय वा दम्पत्योर्मिथुनं प्रजातयोस्त्रिवर्षोपभुक्तं च धर्मिष्ठेषु विवाहेषु नानुयुञ्जीत। गान्धर्वासुरोपभुक्तं सवृद्धिकमुभयं दाप्येत। राक्षसपैशाचोपभुक्तं स्तेयं दद्यात्। अर्थशास्त्र III. 2. p. 152.

Viṣṇu Dh. S. VI. 31-32). But the same smṛtis make it clear that under certain distressing circumstances the wife's separate property was liable for the maintenance or debts of the husband. The Mit. expressly states[1521a] that if the husband uses his wife's strīdhana under any other circumstances (than those specified by Yāj. II. 147 and Kāt.) then he has to return it, that no relation except the husband has any right to use a woman's strīdhana during her lifetime even in distress or disease &c. and relies on Manu VIII. 29 which requires the righteous king to award the punishment for theft against such relatives as appropriate the wealth of women. The Sm. C. and V. Mayūkha follow the Mit., but the V. R. and V. C. hold that Kātyāyana's verse applies not only to the husband, but also to the son, father and brothers of the woman. Kāt. (912-913) provides[1521a] that if any one of the four persons (q. in n. 1515 above) forcibly consumes strīdhana he should be made to return it with interest and should be also liable to fine (or punishment) and that if any one of these consumes strīdhana amicably after securing her consent then he would be liable to return only the principal amount, when he becomes well-off (i. e. able to pay). Devala[1522] also states, ' if the husband makes a gift of strīdhana without cause or enjoys it, he must pay it back with interest, but he may use the strīdhana of his wife for relieving the distress of a son (and also of the family, acc. to V. Mayūkha). Kāt. (908)[1523] adds a special rule, ' if the husband has two wives and he does not reside with one of them (i. e. neglects her), he should be forcibly made to return (the strīdhana of his neglected wife) by the king even though she bestowed it upon him through affection. ' The texts of Kāt., Devala and Nār. quoted above about the dominion of the woman over her strīdhana and about the husband's power over it are

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1521a. यदि ह्येकतरो ह्येषां स्त्रीधनं भक्षयेद् बलात्। सवृद्धिकं स दाप्यः स्याद् दण्डं चैव समाप्नुयात्। तदेव यद्यनुज्ञाप्य भक्षयेत्प्रीतिपूर्वकम्। मूलमेव प्रदाप्यः स्याद्यद्यसौ धनवान् भवेत्॥ कात्या. q. by अपरार्क p. 755, दायभाग IV. 1. 24 p. 78, स्मृतिच. II. p. 282.

1522. वृथा मोक्षे च भोगे च स्त्रियै दद्यात्सवृद्धिकम्। पुत्रार्तिहरणे वापि स्त्रीधनं भोक्तुमर्हति॥ देवल q. by स्मृतिच. II. p. 283 (पुत्रग्रहणं कुटुम्बोपलक्षणार्थम्), अपरार्क p. 755, व्य. मयूख p. 156.

1523. अथ चेत्स द्विभार्यः स्यान्न च तां भजते पुनः। प्रीत्या निसृष्टमपि चेत्प्रतिदाप्यः स तद् बलात्॥ कात्या. q. by अपरार्क p. 755, दायभाग IV. 1. 24 p. 78, स्मृतिच. II, p. 283. The व्य. म. p. 156 ascribes this verse to देवल.

authoritative in all schools even now. Manu IX. 199[1524] provides: 'wives should not spend (for their own benefit) from the property of their families which is common to many, nor from their own property without the husband's permission.' The V. Mayūkha interprets this as meaning that she has no independent power even over ādhivedanika and the like, but this would be opposed to the express texts of Kāt., Vyāsa and Devala. Therefore the words must be taken as only recommendatory.

Kāt. (916) delivers a special rule viz. 'strīdhana[1525] which was promised (to a woman) by her husband should be paid to her as a debt by the sons (i. e. by her own sons or stepsons) provided she resides in the husband's family; she should not reside with her paternal family.' The Sm. C. and V. P. (p. 546) explain that even grandsons and great-grandsons are liable to pay just as sons are. According to Kāt. as understood by the Sm. C. and others a wife who is full of evil acts, is immodest, wastes property and is given up to adultery, does not deserve (to dispose of) strīdhana and V. P. and V. C. explain that it may be taken away from her in such a case.[1526] In modern times this rule of forfeiture of rights would not be enforced by the courts as regards strīdhana. Some explain this verse as referring to the widow as heir and separate the words as 'strī dhanam.'[1527] Vide *Ganga v. Ghasita* 1 All. 46 (F. B.), 48–49.

Succession to Strīdhana.—The several schools of Hindu Law differ from each other perhaps more widely on this subject than

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1524. न निर्हारं स्त्रियः कुर्युः कुटुम्बाद्बहुमध्यगात् । स्वकादपि च वित्ताद्धि स्वस्य भर्तुरनाज्ञया ॥ मनु IX. 199. This verse is variously explained. कुल्लूक, राघवानन्द and others explain निर्हारं as 'रत्नालंकाराद्यर्थं धनसञ्चयं,' while सर्वज्ञनारायण and व्य. मयूख explain as 'व्यय' and सर्वज्ञ° explains स्वकात् as 'स्वस्यासाधारणधनादपि स्त्रीधनव्यतिरिक्तात्'.

1525. भर्त्रा प्रतिश्रुतं देयमृणवत्स्त्रीधनं सुतैः । तिष्ठेद् भर्तृकुले या तु न सा पितृकुले वसेत् ॥ कात्या. q. by स्मृतिच. II. p. 283 (first half), वि. र. p. 514, वि. चि. p. 142. The व्य. म. p. 153 quotes the first half as देवल's.

1526. अपचारक्रियायुक्ता निर्लज्जा चार्थनाशिका । व्यभिचाररता या च स्त्रीधनं सा न चार्हति । कात्या. q. by मेधा. on मनु VIII. 28 (without name), स्मृतिच. II. p. 283, वि. चि. p. 141–142, व्य. म. p. 157, व्य. प्र. p. 545. 'या पुनः अतिदुष्टा स्त्री सा स्वधनमनिसृष्टमपि विनियोक्तुं नार्हतीत्याह स एव' स्मृतिच.

1527. For a comparison of the ancient and medieval Hindu Law of strīdhana with the Roman, French and English law, vide Bannerjee's 'Marriage and stridhana' pp. 394–399.

on any other. But one thing is generally common to all schools viz. that as regards succession to strīdhana daughters are preferred to sons, though in later days sons were introduced by some writers as heirs along with daughters or even as preferable to daughters for certain kinds of strīdhana. This was probably due to the fact that the value of strīdhana property became considerable in later times and society which held to the doctrine of the dependence and inferior position of women could not tolerate the idea that large estates should go to women alone. The causes of the variance among writers on the devolution of strīdhana are historical. The text-writers wrote at different times and in different countries and probably reflect the popular sentiments of their own countries and times tinged now and then by personal predilections also. The digests sometimes expressly say that their interpretation follows the usage of their times (vide V. Mayūkha in note 1529 below).

The succession to strīdhana varies according as the woman is unmarried or married, according as the marriage was in an approved or an unapproved form, and also according to the species of strīdhana and the school of law to which she is subject.

First, the important texts of the smṛtis on succession to strīdhana may be brought together. The oldest extant text is that of Gaut. 28. 22 which provides,[1528] 'strīdhana devolves (first) on daughters; (in a competition among daughters) it goes to those that are unmarried (*apratta*, lit. not given away in marriage) and (in a competition among married daughters) to those that are not well provided for (i. e. that are indigent).' Manu (IX. 192–193) provides: 'when the mother dies all the full brothers and full sisters should equally divide the mother's estate. Even to the daughters of those daughters some thing should be given (that is) as much as would be seemly out of the estate of their grandmother on the ground of affection'. In Manu IX. 195 it is said that the six kinds of strīdhana, as also anvādheya strīdhana and gifts made by the husband through affection, should go to her progeny if she dies in her husband's lifetime. The verses of Manu (IX. 192–3) are variously explained by the commentators, Sarvajña-Nārāyaṇa holding that mother's estate means estate other than technical strīdhana. Most of them rely on a text of Bṛ. and

1528. स्त्रीधनं दुहितॄणामप्रत्तानामप्रतिष्ठितानां च । गौ. 28. 22.

hold that full brothers and unmarried sisters succeed together and married sisters (i. e. daughters of the woman whose heirs are to be found) get some trifle (¼ of each brother acc. to Kullūka). Manu IX. 196-197 further provide that when a woman was married in one of the five forms of marriage viz. Brāhma, Daiva, Ārṣa, Prājāpatya and Gāndharva and died without issue her strīdhana goes to her husband and if she was married in the Āsura and the other two forms it went, if she died issueless, to her mother and father. Yāj. II.[1529] 117 provides that daughters take the strīdhana estate of their mother and on failure of them the (male) issue. In II.[1530] 144 Yāj. again says that strīdhana goes to daughters, but that if the woman dies without issue then it goes to the husband if she was married in one of the four forms (brāhma, daiva, ārṣa, prājāpatya) but to her parents if she was married in the other four forms. Viṣṇu Dh. S. (17. 19-21) and Nār. (dāyabhāga, 9) contain the same rules as Yāj. II. 144-145, while Nār. (dāyabhāga 2) states that the mother's wealth should be divided among the daughters and in the absence of daughters the latter's issue takes it. Śaṅkha-Likhita[1531] declare that the mother's estate is taken in equal shares by the full brothers (sons of the deceased mother) and their unmarried sisters. Bṛ.[1532] (S. B. E.

1529. मातुर्दुहितरः शेषमृणात्ताभ्य ऋतेऽन्वयः । या. II. 117 on which the मिता. says, 'दुहितॄणामभावे अन्वयः पुत्रादिर्गृह्णीयात् ।'; some construe the word अन्वय as meaning the issue of the daughters (i. e. daughter's daughters and daughter's sons). Vide व्य. म. p. 159, "यत्तु याज्ञवल्क्यः 'मातुर्दुहि ... न्वयः' इति तत्राप्यन्वयपदं कन्यासन्ततिपरमिति केचित् । परे तु दुहित्रभावे पुत्रा एव गृह्णीयुः, नारदीये तदा मातुरेव परामर्शादित्याहुः । आचारसंवादी चायं पक्षः ।." नारद (दायभाग, 2) is मातुर्दुहितरोऽभावे दुहितॄणां तदन्वयः ।, about which the मिता. on याज्ञ. II. 145 remarks 'तच्छब्देन संनिहितदुहितृपरामर्शात्'. The मद. पा. (p. 667) explains नारद as मातुर्धनं दुहितर आप्नुयुस्तदभावे दुहितॄणां दौहित्रीणां तदभावे तदन्वये ये जाता दौहित्रास्तेषामित्यर्थः ।; the विवादचन्द्र p. 75 says 'दुहितॄणामभावे तदन्वयस्तत्पुत्रादिर्विभजेदित्यर्थः; मातुरन्वय इति बालरूपः ।'

1530. अतीतायामप्रजसि बान्धवास्तदवाप्नुयुः । अप्रजःस्त्रीधनं भर्तुर्ब्राह्मादिषु चतुर्ष्वपि । दुहितॄणां प्रसूता चेच्छेषेषु पितृगामि तत् ॥ या. II. 144-145; ब्राह्मादिषु चतुर्षु विवाहेष्वप्रजायामतीतायां तद्भर्तुः । शेषेषु च पिता हरेत् । सर्वेष्वेव प्रसूतायां यद् धनं तद् दुहितृगामि । विष्णुधर्मसूत्र 17. 19-21; स्त्रीधनं तदपत्यानां भर्तुगाम्यप्रजासु तु । ब्राह्मादिषु चतुर्ष्वाहुः पितृगामीतरेषु च ॥ नारद (दायभाग, verse 9).

1531. समं सर्वे सोदर्या मातृकं रिक्थमर्हन्ति कुमार्यश्च । शङ्खलिखित q. by दायभाग IV. 24 p. 79, परा मा. III. p. 551, बालम्भट्टी on या. II. 145. हरदत्त on गौ. 28. 22 reads समं ... द्रव्यमर्हाः स्त्रीकुमार्यश्च.

1532. स्त्रीधनं स्यादपत्यानां दुहिता च तदंशिनी । अप्रत्ता चेत्समूढा तु लभते मानमात्रकम् । बृह. q. by स्मृतिच. II. p. 285, हरदत्त on गौ. 28. 22, दायभाग IV. 2. 3 p. 79 (अपत्यपदं पुत्रपरं तेषामप्रजाभिर्दुहितृभिः सह मातृधनविभागः), परा. मा. III. p. 552 (reads सा न मातृकम्), विवादचन्द्र p. 75.

33 p. 383 verse 87) declares, 'strīdhana goes to her progeny, but the unmarried daughter is preferred, while the married one gets only some trifle as a token of regard'. Parāśara holds that the unmarried daughters take all the strīdhana, but in a competition between married daughters alone and sons they all take equal shares. Devala[1533] states, 'on the death of a woman her strīdhana is taken in equal shares by her sons and daughters; if she leaves no issue it would be taken by her husband, mother, brother or father'. Pāraskara[1534] (q. by Par. M. III. 552) states that strīdhana devolves on the unmarried daughter, that the son does not get it, but that he shares equally with a married daughter. Kauṭ.[1535] (III. 2 p. 153) prescribes that if a woman dies during her husband's lifetime her sons and daughters divide her strīdhana; if she has no son then daughters divide it, on failure (of both sons and daughters) the husband takes it and that the śulka, anvādheya or any other kind of strīdhana given by her relatives is taken by her relatives. Kātyāyana[1536] (917–920) whose treatment of strīdhana is the most detailed of all smṛti writers has the following verses on succession to strīdhana: 'Sisters whose husbands are living should share with their brothers the strīdhana (of their mother); this is the rule of law about strīdhana and partition (among brothers and sisters) is prescribed. On failure of daughters the (strīdhana) wealth devolves on sons (of the deceased woman); the wealth given to a woman by her kinsmen (paternal or maternal) goes in the absence of the kinsmen (that gave it) to the husband.

1533. सामान्यं पुत्रकन्यानां मृतायां स्त्रीधनं स्त्रियाम्। अप्रजाया हरेद्भर्ता माता भ्राता पितापि वा। देवल q. by दायभाग IV. 2. 6 p. 79, व्यव. नि. p. 466, बालम्भट्टी on या. II, 145.

1534. अप्रत्तायास्तु दुहितुः स्त्रीधनं परिकीर्तितम्। पुत्रस्तु नैव लभते प्रत्तायां तु समांशभाक्। पारस्कर q. by परा. मा. III. p. 552 (तदप्रतिष्ठितोढदुहितृविषयम्), व्यव. नि. p. 463. Is it पराशर?

1535. जीवति भर्तरि मृतायाः पुत्रा दुहितरश्च स्त्रीधनं विभजेरन्। अपुत्राया दुहितरः। तदभावे भर्ता। ... ... शुल्कमन्वाधेयमन्यद्वा बन्धुभिर्दत्तं बान्धवा हरेयुः। अर्थशास्त्र III. 2. p. 153.

1536. भगिन्यो बान्धवैः सार्धं विभजेरन् सभर्तृकाः। स्त्रीधनस्येति धर्मोयं विभागस्तु प्रकल्पितः। दुहितॄणामभावे तु रिक्थं पुत्रेषु तद्भवेत्। बन्धुदत्तं तु बन्धूनामभावे भर्तृगामि तत्॥ पितृभ्यां चैव यद्दत्तं दुहितुः स्थावरं धनम्। अप्रजायामतीतायां भ्रातृगामि तु सर्वदा॥ आसुरादिषु यल्लब्धं स्त्रीधनं पैतृकं स्त्रिया। अभावे तदपत्यानां मातापित्रोस्तदिष्यते॥ कात्या. q. by अपरार्क p. 721 (the first two only), स्मृतिच. II. pp. 285–287 (all except पितृभ्यां &c.), वि. र. p. 518 and वि. चि. p. 143 (first two); दायभाग IV, 2. 12 p. 92 has the verse पितृभ्यां (ascribes it to वृद्धकात्यायन); व्य. म. p. 162 reads पुत्रगामि for भर्तृगामि.

Whatever immovable property was given by the parents to their daughter always goes to her brother if she dies without issue. Whatever wealth was obtained by a woman from her parents in the forms of marriage beginning with āsura is declared as going to her parents on failure of her progeny.'[1537] The first two verses are apparently in conflict and must be read with Gaut. 28. 22. So probably the following propositions were laid down by Kāt. viz. (1) unmarried daughters are preferred; (2) married daughters whose husbands are living share along with their brothers, if there be no unmarried daughter; (3) widowed daughters take only if there are no daughters whose husbands are living or if there are no sons; (4) wealth given by paternal and maternal kinsmen goes to them and on failure of these, to the husband; (5) immovable property given by parents goes to the brother of the woman on failure of issue; (6) wealth given in the āsura, rākṣasa and paiśāca forms goes to parents on failure of issue. Yama has a verse very similar to Kātyāyana's about a woman married in the āsura and the following forms. The commentaries and digests make valiant efforts to reconcile the conflicts among the smṛti texts quoted above. It is not quite necessary to go into that question here in detail for fear of encumbering this work too much.

How the devolution of strīdhana was dealt with by the commentators has now to be seen. They all prefer daughters to sons for certain kinds of strīdhana. Why the devolution of strīdhana property should be different from that of the property of a male is not clearly explained anywhere. The Mit. on Yāj.[1538] II. 117 gives the reason that woman's property goes to the daughter because in her more particles of the mother's body inhere than in the son. Probably the daughters were preferred as heirs to strīdhana as a sort of equity, when sons were allowed to exclude daughters in the inheritance to the father's wealth.

According to the Mit. there are two lines of succession to strīdhana, one for śulka and the other for all other kinds of strīdhana. Śulka, acc. to the Mit. that quotes Gaut., devolves first

1537. आसुरादिषु यद् द्रव्यं विवाहेषु प्रदीयते । अप्रजायामतीतायां पितैव तु धनं हरेत् ॥ यम q. by स्मृतिच. II. p. 286, दायभाग IV. 2. 28 p. 88.

1538. मातृकृतमृणं पुत्रैरेवापाकरणीयं न दुहितृभिः । ऋणावशिष्टं तु धनं दुहितरो गृह्णीयुरिति । युक्तं चैतत् । पुमान् पुंसोऽधिके शुक्रे स्त्री भवत्यधिके स्त्रियाः—इति स्त्र्यवयवानां दुहितृषु बाहुल्यात् स्त्रीधनं दुहितृगामि । पितृधनं पुत्रगामि पित्रवयवानां पुत्रेषु बाहुल्यात् । मिता. on या. II. 117. पुमान्पुंसो &c. is मनु. III. 49.

on the full brothers, then on the mother.[1539] Some like the Subodhinī, the Dīpakalikā, Haradatta on Gaut. 28. 23 hold that it devolves on the mother first and then on the full brothers; but many works such as the Dāyabhāga IV. 3. 28 (p. 95), Sm. C., Par. M., V. P., V. C. follow the Mit. It is somewhat strange that the Madanapārijāta p. 668 (which was really composed by the author of the Subodhinī in the name of his patron Madanapāla, holds that the śulka is first taken by the brothers and then by the mother. This raises a doubt whether the printed Subodhinī is correct or whether the author changed his opinion.

As regards succession to the property of a maiden there is no difference at all between the Mit. and other works. The Mit. quotes a text of Baudhāyana[1540] that the wealth of a deceased maiden first devolves on her full brothers, then on the mother and then on the father. The V. P. adds that on failure of the father the maiden's wealth goes to the parents' nearest sapiṇḍa.[1541] Yāj. II. 146 provides that if a girl who had been promised in marriage dies before marriage, the intending bridegroom was entitled to take back the śulka or other gifts

1539. भगिनीशुल्कं सोदर्याणामूर्ध्वं मातुः पूर्वं चैके । गौ. 28. 23-24; मिता. (on या. II. 145) says, शुल्कं तु सोदर्याणामेव ; 'मातुरभावे सोदर्या गृह्णीयुरित्यर्थः ' सुबोधिनी on या. II. 145; 'शुल्कं तु सोदराणामेव । भगिनीशुल्कं सोदर्याणामिति गौतमवचनात्सोदराभावे मातुः । ऊर्ध्वं मातुरिति तद्वचनादेव । पूर्वं चैके इति तु परमतम् । व्य. प्र. p. 553 ; शुल्कं तु सोदरा एव गृह्णीयुः । तथा च गौतमः । भगिनी ... मातुरिति । दुहित्रादिषु पौत्रपर्यन्तेषु विद्यमानेष्वपि भगिनीशुल्कं सोदरा एव हरेयुरित्यर्थः । मद. पा. p. 668 ; 'ऊर्ध्वमिति मातुर्मरणादनन्तरमित्यर्थः । कल्पतरुरप्येवम् । ' ... माता चात्र भगिन्येव । तथा च तद्रूपमातुरभावे दुहित्रादिषु पौत्रपर्यन्तेषु सत्स्वपि स्वभगिनीशुल्कं सोदरा एव गृह्णीयुरित्यर्थः । बालम्भट्टी (व्य. p. 257) ; ऊर्ध्वं मातुरुपरताविस्यर्थः । मातापित्रोस्तु सद्भावे तयोरेव । दीपकलिका.

1540. रिक्थं मृतायाः कन्याया गृह्णीयुः सोदरास्तदभावे मातुस्तदभावे पितुरिति बौधायनस्मरणात् । मिता. on या. II. 146 ; the दायभाग makes of this a verse as रिक्थं... सोदराः स्वयम् । तदभावे भवेन्मातुस्तदभावे भवेत्पितुः ॥'. The मदनरत्न (folio 106a) reads it as रिक्थं ... समम् । ... तदभावे पितुर्भवेत् ॥; मातापित्रोरभावे तत्प्रत्यासन्नगामि । व्य. प्र. p. 552. The above passage of the Mit. is referred to in *Gandhi Maganlal v. Bai Jadab* 24 Bom. 192 (F. B.) at p. 211 (where it was held that a paternal grandmother in Gujarat inherited the wealth left by her maiden grand-daughter in the absence of nearer heirs, that she took an absolute interest and that on her death the property goes to *her* heir and not to that of the grand-daughter.

1541. Vide also *Janglubai v. Jetha Appaji* 32 Bom. 409, 412 and *Vithal v. Balu* 60 Bom. 671, 677 for instances of sapiṇḍas of the parents inheriting to the stridhana of a woman dying respectively as a maiden or as a woman married in an approved form of marriage.

made by him after deducting his own expenses and those of her family.

The Mitākṣarā order of succession for all kinds of strīdhana, other than śulka and maiden's property, is as follows: (1) unmarried daughter; (2) married daughter who is indigent; (3) married daughter who is well provided for; (4) daughter's daughters; (5) daughter's son; (6) sons; (7) son's sons (here also the rule of *per stirpes* applies); (8) husband (if the woman was married in one of the four approved forms); (9) sapiṇḍas of the husband in the order of propinquity; on failure of any sapiṇḍa of the husband, her mother, then her father and then the sapiṇḍas of the father (before it goes to the Crown). But if the woman was married in one of the unapproved forms, then on failure of her descendants her strīdhana went to her mother, then to her father and then to the father's sapiṇḍas in the order of propinquity. On failure of the sapiṇḍas of the father it would (by analogy) go to her husband and then to his sapiṇḍas (before going to the Crown). When grand-daughters directly inherit the strīdhana of their grandmother they take *per stirpes* (acc. to the Mit. which quotes Gaut. 28. 15), if they are the daughters of several daughters.[1542] The Mit. (on Yāj. II. 145), Aparārka (p. 721) and several others provide (following Manu IX. 198 = Anuśāsana 47.25) that if a woman of a lower caste dies issueless leaving strīdhana, then the daughter of her co-wife of a higher class inherits that strīdhana and on failure of such step-daughter, the son of the latter inherits. It may be noted that as regards succession to strīdhana, the rule of representation which holds good in relation to succession to males does not apply. When a male dies leaving separate property and a son and a grandson (son of a predeceased son) both succeed together, the grandson representing his deceased father. But if a woman possessed of strīdhana dies having only a son and a predeceased son's son, the son will take the whole of the strīdhana excluding the son's son. Vide *Bai Raman v. Jagjivandas* 41 Bom. 618.

It is not possible nor necessary to deal exhaustively with the devolution of strīdhana according to the various schools of Hindu Law. But a few indications from the important text

1542. तासां भिन्नमातृकाणां विषमाणां समवाये मातृद्वारेण भागकल्पना। प्रतिमातृतो वा स्ववर्गे भागविशेषः—इति गौतमस्मरणात्। मिता. on या. II. 145.

books having authority in the different provinces will be offered. According to the Sm. C. (which is the leading authority in Madras after the Mit.) strīdhana includes only those kinds of property that are so described in the smṛtis (i. e. only technical strīdhana) and the lines of devolution are as follows : (1) śulka devolves in the same way as laid down by the Mit. cited above (Sm. C. II. p. 287); (2) Yautaka devolves on unmarried daughters first (Sm. C. II. p. 285); (3) Anvādheyaka and Bhartṛdatta pass to sons and married daughters whose husbands are living, all inheriting together in equal shares (Sm. C. II. p. 284); (4) other kinds of technical strīdhana such as adhyagni &c. pass first to the maiden daughters and married daughters who are *apratiṣṭhita*,[1543] then to married daughters that are provided for ; then to daughter's daughters, then to daughter's sons, then to sons, then to son's sons &c., then to the husband or father (according to the form of marriage). The Madras High Court follows the Mit. (in preference to the Sm. C.) as to the devolution of Anvādheyaka and Bhartṛdatta and holds that certain kinds of non-technical strīdhana (such as gifts by strangers during coverture) devolve acc. to the rules of the Mit. Vide *Salemma v. Lutchmana* 21 Mad. 100.

The Vivādacintāmaṇi, the leading authority in Mithilā, restricts strīdhana to the technical strīdhana recognized by the smṛtis and lays down the devolution of it as follows : (1) Śulka[1544] (defined as property received by a woman at the time of her marriage, if in an unapproved form) passes as under the Mit. cited above ; (2) Yautaka passes first to unmarried daughters, then in the way laid down by the Mit. for all strīdhana ; (3) all technical strīdhana other than the two preceding varieties passes to sons and unmarried daughters together, then to sons and married daughters jointly, then to daughter's daughters, then to daughter's sons and then as under the Mit. system (for strīdhana in general.)

The Vyavahāramayūkha which is held to be of paramount authority in Gujarat, Bombay Island and Northern

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1543. The word अप्रतिष्ठिता is explained by the Sm. C. as follows, 'अप्रतिष्ठिता अनपत्या निर्धना दुर्भगा विधवा वा। एवमपरार्कानुसारात् गौतमवचनं व्याख्यातम्। अस्य विज्ञानेश्वरकृता व्याख्या हेया स्वबुद्धिमात्रेणाध्याहारादिकरणात्।' स्मृतिच. II. p. 285. वि. चि. p. 147 also says 'अप्रतिष्ठिता अनपत्या निर्धनभर्तृका दुर्भगा चेति रत्नाकरादयः।'

1544. गौतमः। भगिनीशुल्कं सोदर्याणामूर्ध्वं मातुः। पूर्वं चेत्येके। आसुरादिविवाहपणलब्धविषयमेतत्। वि. चि. p. 143.

Konkan [1545] proposes various lines of succession to strīdhana. Its treatment is based on the Sm. C. and the Madanaratna. It first divides strīdhana as stated above into technical (pāribhāṣika) and non-technical (apāribhāṣika). The first is subdivided into four classes for the purpose of inheritance; (I) śulka which passes as stated above under the Mitākṣarā; (II) yautaka goes to unmarried daughters, (if there be no unmarried daughters)

1545. For the territory in which the V. Mayūkha is supreme, vide *Lallubhai v. Mankuvarbai* 2 Bom. 388 (F.B.) at p 418, *Jankibai v. Sundra* 14 Bom. 612 at pp. 623-24; *Vyas Chimanlal v. Vyas Ramchandra* 24 Bom. 367 (F. B.) at p 373. How the Vyavahāramayūkha composed by a Mahārāṣṭra brāhmaṇa whose family had settled at Benares came to be regarded as a work of high authority in Gujarat is explained in *Lallubhai v. Mankuvarbai* 2 Bom. 388 at pp. 418-419 and in *Bhagirthibai v. Kahnujirav* 11 Bom. 285 (F. B.) at pp 294-95. As there is divergence between the views of the Mit and the Mayūkha in the rules of succession, it becomes a matter of great practical importance to settle with precision the exact limits in Northern Konkan up to which the Mayūkha must be regarded as a work of paramount authority. It has been judicially decided that Karanja, an island opposite the Bombay harbour, is governed by the Mayūkha (in *Sakharam v. Sitabai* 3 Bom. 353), that Mahad, the southernmost Taluka of the Kolaba District, is not so governed and that the predominance of the Mayūkha cannot be taken further south than Cheul and Nagothna in the Kolaba District (vide *Narhar v. Bhau* 40 Bom. 621). Similarly difficult questions arise whether Kathiawar which is quite contiguous to Gujarat and some territory bordering on Gujerat towards the north or east is governed by the views of the Mayūkha in preference to those of the Mit. Some parts of Kathiawar which were (and even now are) under the domination of the Gaikwad of Baroda may, on the analogy of the grounds on which the Mayūkha is held to be of paramount authority in Gujarat, be deemed to be governed by the Mayūkha. It appears to me that the tendency of courts should be to restrict the extent of the territory in which the Mayūkha is supreme and to hold that everywhere the Mitākṣarā is supreme, except in those territories where the Mayūkha has been expressly recoginzed as supreme by the feudatory States contiguous to Gujarat or by judicial decisions. The Mit. is the paramount authority in the whole of India except in Bengal; therefore on the analogy of the maxim that a general rule is applicable and is supreme in all cases except where an exception clearly covers the matter (अपवादविषयपरिहारेण उत्सर्गस्य व्यवस्थितिः) districts outside modern Gujarat but bordering on it should not be held to be governed by the Mayūkha.

then probably to the married daughters; (III) anvādheya[1545a] and bhatṛprīti-datta (husband's gift of affection) are inherited by sons and unmarried daughters together in accordance with Manu (IX. 192 and 195), (if there be no unmarried daughters) by sons and married daughters, then daughter's issue, then son's sons; (IV) other[1546] kinds of technical strīdhana devolves as under the Mit.; (V) non-technical[1547] strīdhana is inherited in the following order; sons, son's sons, sons' sons' sons, daughters, daughters' sons, daughter's daughters. When there is no issue of the woman the succession depends in all cases as under the Mit. on the question whether the woman was married in an approved or an un-approved form. The V. Mayūkha employs language somewhat different from that of the Mit. in speaking of the inheritance to strīdhana when a woman dies without

1545a. Vide *Sitabai v. Vasantrao* 3 Bom. L. R. 201 (where a long passage from the V. Mayūkha is quoted in translation and it is held that *anvādheya* includes gifts or bequests from parents after marriage as well as from the husband and that sons and daughters succeed equally to *anvādheya*) ; *Dayaldas v. Savitribai* 34 Bom. 385 (F.B.), where it was held that a passage of the Mayūkha wherein the view of the Mit. was first stated and then the view of others really meant that the latter was the view of the Mayūkha, that sons and daughters inherited anvādheya together and that if there were both married and unmarried daughters, the unmarried daughters and the sons inherited together. मृतायाः स्त्रिया धनं पुत्रैर्दुहितृभिश्च साम्येन ग्राह्यम्। तथा च मनुः—जनन्यां ... ... समाभयः ॥ एतच्चान्वाधेयभर्तृप्रीतिदत्तविषयम्। एतद्विविधधनविषयेऽपरिणीतपरिणीतपुत्रीसमवाये विशेषमाह बृहस्पतिः। स्त्रीधनं स्यादपत्यानां ... । अप्रत्तानामभावे प्रत्ताभिरविधवाभिर्भ्रातृभिः सह विभज्य ग्राह्यमित्याह कात्यायनः। मदनरत्न (folio 105 b). Vide व्य. म. text pp. 157–58 for the two views. It will be noticed that the Mit. construes the verse of Manu distributively i. e. sons take equally when they succeed and daughters do so when they succeed and that Manu does not mean that sons and daughters inherit simultaneously .

1546. अन्वाधेयभर्तृप्रीतिदत्ताभ्यामन्यदध्यग्न्यादिस्त्रीधनं दुहितर एव गृह्णीयुः। तासु च प्रत्ताप्रत्तासमवाये त्वप्रत्ता एव गृह्णीयुः। मदनरत्न (folio 105 b): अन्वाधेयभर्तृप्रीतिदत्तभिन्ने पूर्वोक्ते पारिभाषिके स्त्रीधने तु विशेषमाह गौतमः—स्त्रीधनं ... अप्रतिष्ठितानां च—इति। व्य. मयूख p. 159.

1547. Vide *Manilal Rewadat v. Bai Rewa* 17 Bom. 758 (as to inheritance of non-technical strīdhana) where it was held that as regards strīdhana under the Mayūkha the woman is recognized as a fresh source of devolution, that the words ' sons and the rest ' mean no more than sons, grandsons and great-grandsons, that as regards property which does not class as pāribhāṣika strīdhana, the sons and the rest take precedence over the 'daughters and the rest (i. e. their issue)', that failing sons and daughters the heirs to pāribhāṣika strīdhana and apāribhāṣika strīdhana are the same, save that as between male and female offspring the latter have a preferential right as to pāribhāṣika, while the former have a similar right as to apāribhāṣika. पारिभाषिकातिरिक्तं मातृधनं दुहितृसत्त्वे पुत्रादय एव लभेरन्। व्य. मयूख p. 160.

issue. But it has now been judicially held that both mean the same thing[1548].

In the Dāyabhāga school the devolution of various kinds of strīdhana according to the Dāyabhāga and D. K. S. is as follows: (I) śulka devolves[1549] in the following order: (1) full brother, (2) mother, (3) father, (4) husband; (II) Yautaka devolves[1550] in the following order: (1) unmarried and unbetrothed daughters, (2) betrothed daughters, (3) married daughters, who have or are likely to have sons, (4) barren married daughters and childless widowed daughters taking together in equal shares, (5) sons, (6) daughter's sons, (7) sons' sons, (8) son's son's sons, (9) step-son, (10 and 11) stepson's son, stepson's grandson. Then if the marriage was in an approved form, yautaka passed in the absence of any of the above in order to husband, brother, mother and father. If the marriage of the woman was celebrated in an unapproved form then her strīdhana passed in order to mother, father, brother, husband. (III) Anvādheya gifts[1551] (gifts or bequests) made subsequent to marriage by the father

1548. Vide *Tukaram v. Narayan* 36 Bom. 339 (F. B.), where there is an elaborate discussion about the following passages of the Mit. and the Mayūkha. तदप्रजःस्त्रीधनं पितृगामि। माता च पिता च पितरौ तौ गच्छतीति पितृगामि। तदभावे तत्प्रत्यासन्नानां धनग्रहणम्। मिता. on या. II. 145; भर्तुरभावे तत्कुले तस्याः प्रत्यासन्नो लभते। पित्रभावे च पितृकुले तस्याः प्रत्यासन्नः। ... यत्तु मिताक्षरायां भर्त्रभावे तत्प्रत्यासन्नानां सपिण्डानां पित्रभावे च तत्प्रत्यासन्नानां सपिण्डानामिति तत्रापि तेनास्याः प्रत्यासन्नास्तत्प्रत्यासन्नास्तद्द्वारा तत्कुले प्रत्यासन्ना इति यावदित्येवं व्याख्येयम्। व्य. मयूख p. 161.

1549. अतः (शुल्कं) प्रथमं सोदराणां तदभावे मातुर्मातुरभावे पितुः। एषां पुनरभावे तद्धनं भर्तुः। दायभाग IV. 3. 29 p. 95.

1550. ततश्च परिणयनलब्धस्त्रीधनं दुहितुरेव न पुत्राणां तत्रैव च क्रमार्थं गौतमवचनं स्त्रीधनं दुहितॄणा ... स्थितानां च। ब्राह्मादिषु विवाहेषु यल्लब्धमध्यग्निधनं स्त्रियाः तत्तस्यां मृतायां प्रथमं दुहितॄणामेव तत्रापि प्रथमं कन्यायास्तदभावे दत्तायास्तदभावे परिणीतायाः। सर्वदुहित्रभावे च पुत्रस्याधिकारः। अप्रजःस्त्रीधने भर्तुराधिकारात्। Dāyabhāga IV. 2. 22 and 25, pp. 85-86. It will be noticed that the D. B. distinguishes between un-betrothed, betrothed and married daughters. Vide Bannerjee's 'Marriage and Stridhana' pp. 477, 489-491 for order of inheritance to Yautaka.

1551. यत्पुनः परिणयनानन्तरे पितृमातृभर्तृकुलात् स्त्रिया लब्धं धनं तद् भ्रातॄणामेव। तदाह याज्ञवल्क्यः। बन्धुदत्तं...प्रजुः॥ (या. २. १४५)...अतः प्रथमं सोदराणां तदभावे मातुर्मातुरभावे पितुः। एषां पुनरभावे तद्धनं भर्तुः। यथा कात्यायनः। बन्धुदत्तं तु बन्धूनामभावे भर्तृगामि तत्। Dāyabhāga IV. 3. 10 and 29. Vide *Prosunno v. Sarat* 36 Cal. 86 (son being held the preferential heir to a married daughter to stridhana given to a woman after marriage by her father), *Ram Gopal v. Narain* 33 Cal. 315 (mother held entitled to preference over the husband of a childless woman who died leaving property gifted to her by her father after marriage). In both these cases there is an elaborate examination of passages of the Dāyabhāga and it is shown how Śrīkṛṣṇa and even modern writers have created confusion by offering varying explanations.

(Dāyabhāga IV. 2.12–16 pp. 92–93) devolve in the same order as for Yautaka except in a few respects, viz. the son takes before married daughters and in case the woman dies without issue the brother, mother, father and husband succeed in that order. IV. As regards Ayautaka (i. e. all technical strīdhana other than the above three) there is a conflict of authority between the Dāyabhāga (IV. 2. 1–12 pp. 79–81) on the one hand and Raghunandana and Śrīkṛṣṇa on the other. Acc. to the former the order[1552] is: son and *kumārī* daughter (or to either on failure of the other); (on failure of both) married daughters that have sons or are likely to have sons; son's sons; daughter's sons; barren and widowed daughters. But Raghunandana and Śrīkṛṣṇa interpolate son's son, son's son's son, stepson, stepson's son, stepson's grandson between daughter's sons and barren and widowed daughters. In the decided cases the latter order has generally been followed.

If there be none of the above both Yautaka and Ayautaka strīdhana pass in order (acc. to Dāyabhāga IV. 3. 37 p. 98) to six heirs[1553] viz. the husband's younger brother, husband's

1552. तत्र मनुः । जनन्यां ... सनाभयः । ... बृहस्पतिरपि ... स्त्रीधनं तदपत्यानां ... । अपत्यपदं पुत्रपरम् । तेषामप्रत्ताभिर्दुहितृभिः सह मातृधनांशभागः । ... किं तूक्तादेव हेतोः पुत्रकुमारीदुहित्रोस्तुल्यवदधिकारः । एतयोश्चान्यतराभावेऽन्यतरस्य तद्धनं द्वयोरप्येतयोरभावे तु ऊढाया दुहितुः पुत्रवत्याः सम्भावितपुत्रायाश्च तुल्याधिकारः स्वपुत्रद्वारेण पार्वणपिण्डदान-सम्भवात् । ... पौत्रदौहित्रयोस्तु सद्भावे पौत्रस्यैवाधिकारः ... उक्तानां तु सर्वेषां दौहित्रपर्यन्तानामभावे वन्ध्याविधवयोरपि मातृधनाधिकारिता । तयोरपि तत्प्रजात्वात् प्रजाभावे चान्येषामधिकारात् । दायभाग IV. 2. 1–2, 9, 11–12. Dāyabhāga employs the word *aprattā* elsewhere in the sense of 'unbetrothed' and so betrothed daughters cannot take along with sons. The last passage in the quotation shows that the doctrine of spiritual benefit was not to be rigidly employed in succession to strīdhana, acc. to the Dāyabhāga. श्रीकृष्ण remarks (in his comment on दायभाग), दौहित्रपर्यन्तानामिति प्रपौत्रपर्यन्तोपलक्षणम् ।

1553. यदाह बृहस्पतिः । मातुःस्वसा मातुलानी पितृव्यस्त्री पितृष्वसा । श्वश्रूः पूर्वजपत्नी च मातृतुल्याः प्रकीर्तिताः । यदासामौरसो न स्यात्सुतो दौहित्र एव वा । तत्सुतो वा धनं तासां स्वस्रीयाद्याः समाप्नुयुः ॥ तदेषां पुत्रादीनां भ्रात्रादिभर्तृपर्यन्तानां चाभावे सत्स्वपि श्वशुरभ्रातृश्वशुरादिषु सपिण्डेषु भगिनीपुत्रादीनामधिकारिता अनन्यगतेर्वचनात्, स्त्रीणां मातृतुल्यत्वप्रतिपादनेनामीषां पुत्रतुल्यत्वज्ञापनेन पिण्डदातृत्वसूचनस्य दायभागप्रकरणे धनाधिकारज्ञापनैकप्रयोजनकत्वात् । ... मातुलो भागिनेयस्य स्वस्रीयो मातुलस्य च । श्वशुरस्य गुरोश्चैव सख्युर्मातामहस्य च । एतेषां चैव भार्याभ्यः स्वसुर्मातुः पितुस्तथा । श्राद्धदानं तु कर्तव्यमिति वेदविदां स्थितिः । इति वृद्धशातातपवचनात् अमीषां पिण्डदत्वप्रतिपादनात् अयं पिण्डदानविशेषादधिकारक्रमः । तत्र प्रथमं देवरः तत्पिण्डतद्भर्तृपिण्डतद्भर्तृदेयपूर्वपुरुषत्रयपिण्डदातृत्वात्सपिण्डत्वाच्च तद्धनेऽधिक्रियते । ... तस्याप्यभावे श्वशुरयोः पिण्डदानात् जामाता श्वश्रूधनेऽधिकारीति । अयं क्रमो ग्राह्यः । स्वस्रीयाद्या इति तु न क्रमार्थं किं त्वधिकारिमात्रज्ञाप-

(Continued on the next page)

brother's son, sister's son, husband's sister's son, brother's son, daughter's husband. Bṛ. says that the mother's sister, maternal uncle's wife, paternal uncle's wife, father's sister, mother-in-law, elder brother's wife are declared to be like one's mother, that when these women have no *aurasa* child or a son of their co-wife or a daughter's son or a son's son or stepson's son, then the sister's son and the rest may take their wealth. This text, acc. to the Dāyabhāga, simply declares that a sister's son and the others may be heirs to the strīdhana of the maternal aunt and the rest but the priority is determined among the six heirs mentioned above in Bṛhaspati's text by the principle of religious benefit. Though the sister's son is the first in Bṛhaspati's text, it is the husband's younger brother who stands really the first among the six if regard is had to the principle of religious benefit. The Vīr. (V. P. p. 554) states that in the absence of heirs up to the stepson and stepson's sons, the sister's son and the rest (mentioned in Bṛ.) are the heirs to a woman's strīdhana even when sapiṇḍas like her father-in-law are alive, since mere sapiṇḍa relationship would not count when in conflict with a special text. It does not appear that the V. P. holds that the six take in the order stated in the text of Bṛ.; [1551] it rather states that among these six the choice of the preferential heir

(*Continued from the last page*)

नार्थपरम् । दायभाग IV. 3. 31, 35, 36–38 pp. 96–98. Vide also pp. 187–188 The verses of Bṛ. occur in Sm. C. II. p. 287, V. Nir. p. 472, Par. M. III p. 555, V. Mayūkha p. 161, V. P. pp. 553–554. The above verses of Bṛ. mean that males who are a woman's sister's son or her husband's sister's son or her husband's brother's son or her own brother's son or her daughter's husband or her husband's younger brother are like her son and inherit her strīdhana in certain circumstances.

1554. In *Bai Kesserbai v. Hunsraj* L. R. 33 I. A. 176 the above text of Bṛhaspati was discussed in a Bombay case at great length (pp. 190–197) and it was held that under the Mayūkha a co-widow was entitled to succeed to the strīdhana of a widow in preference to her husband's brother or brother's son, that the text of Bṛ. must be taken distributively, that is, when the marriage is in an approved form the husband's sister's son will succeed and that when the marriage is in an unapproved form the brother's son or sister's son will succeed, that the text does not indicate the order of succession which is governed by the principle of propinquity under the Mit. or the Mayūkha. It may be noted that the V. Nir. p. 472 expressly gives the distributive order. Acc. to the Sm. C. the six heirs referred to in the text of Bṛ. take in the order stated therein. The Dāyabhāga does not hold this view.

would be determined by greater or less propinquity[1555]. On failure of these six the husband's sapiṇḍas, sakulyas and samānodakas take and then the father's kinsmen.

The question of an unchaste daughter's succession to strīdhana would be decided in the same way as her succession to her father's property. Under the Dāyabhāga an unchaste daughter will not succeed. But under the Mitākṣarā as interpreted by modern courts an unchaste daughter who is a kept mistress or a prostitute may succeed but only after virgin daughters or married daughters as the case[1556] may be. The Mit. on Yāj. II 290 relies upon the Skandapurāṇa for the proposition that prostitutes are a fifth caste descended from certain *upsarases*.[1557]

It has been held by the courts that though prostitution entailed degradation according to ancient Hindu Law, it did not sever the tie of blood. So the strīdhana of a *naikin* (a dancing girl) or of a married woman who becomes a prostitute may be inherited by her brother or sister or her husband or her husband's relations.[1558]

It may not be out of place here to suggest how strīdhana should be dealt with when Hindu Law comes to be codified as it is likely to be in the near future. It may be urged that all distinctions on the ground of sex should be altogether done away with and whenever a woman succeeds to any property whether of a male or of a female she should take an absolute estate. But if this change is opposed by a large volume of opinion as it is quite possible, then it should at least be provided

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1555. तदेषामभावे सत्स्वपि श्वशुरादिषु सपिण्डेष्वनन्यगतिकैतद्वचनबलाद्भगिनीपुत्रादीनामेव मातुष्वस्रादिधने प्रत्यासत्तितारतम्येनाधिकारः । स्नुषादीनां तु ग्रासाच्छादनमात्रभाक्त्वम् । वचनविरोधे सपिण्डत्वप्रत्यासत्तेरप्रयोजकत्वात् । व्य. प्र. p. 554.

1556. Vide *Tara v. Krishna* 31 Bom. 495 and *Govind v. Bhiku* 46 Bom. L R. 699.

1557. स्मर्यते हि स्कन्दपुराणे पञ्चचूडा नाम काश्चनाप्सरसस्तत्सन्ततिर्वेश्याख्या पञ्चमी जातिरिति । मिता. on या. II. 290.

1558. *Hiralal v. Tripura* 40 Cal. 650, F. B. (holds that brother's son inherited the strīdhana of a woman who had become a prostitute), *Narayan v. Laxman* 51 Bom. 784 (sister of a prostitute was held to be her heir), *Narain Das v. Tirlok* 29 All. 4 (husband held entitled to property acquired by a woman after she deserted him), *Subbaraya v. Ramasami* 23 Mad. 171 (stepson was held entitled to succeed to a woman's property hough she had deserted her husband and led a life of unchastity).

that all property which a woman inherits from a female should be her absolute property. Then as regards inheritance to strīdhana one simple and straightforward rule should be laid down that the woman's sons and daughters should succeed together taking equal shares. A third suggestion would be that when there are no descendants of the woman herself, then the husband should be the next heir. When the strīdhana is that of a maiden, the heirs in order should be her brothers and sisters, then her mother, then her father and after the father the latter's nearest heir. It is not quite necessary at this stage to specify what further rules of devolution should be prescribed.

CHAPTER XXXI

MAINTENANCE AND OTHER TOPICS

The subject of maintenance occupies an important place in modern Hindu Law. A brief statement of the law of the smṛtis and the digests on this subject must be made here.

The liability to provide maintenance for certain persons arises under the ancient Hindu Law in either of two ways viz. (1) on account of bare relationship between the parties or (2) on the ground of the possession of property. A verse[1559] quoted by Medhātithi on Manu III. 72 and IV. 251, by the Mit. on Yāj. I. 224 and II. 175 and occurring in some mss. of the Manusmṛti after XI. 10 provides, 'Manu declares that one must maintain one's aged parents, a virtuous wife and a minor son by doing even a hundred bad acts.' From this verse it follows that irrespective of the possession of property there is a personal legal obligation on the father to maintain his minor son, on the husband to maintain his wife and on the son to maintain his aged parents. Baud. Dh. S. (II. 2. 48) goes further and provides[1560] that a son is bound to maintain a mother even if she be *patita*. To the same effect are Āp. Dh. S. I. 10. 28. 9 and Vas. 13. 47.

1559. वृद्धौ च मातापितरौ साध्वी भार्या सुतः शिशुः । अप्यकार्यशतं कृत्वा भर्तव्या मनुरब्रवीत् ॥ मेधा. on मनु IV. 251 quotes part of it as स्मृत्यन्तर, while the मिता. on या. II.175 ascribes it to Manu. This verse is cited in *Savitribai v. Luxmibai* 2 Bom. 573 (F. B.) at p. 597 (which holds that a Hindu widow voluntarily living apart from her husband's relatives is not entitled to a money allowance as maintenance from them if they were separated from him at the time of his death and that she is not entitled to such maintenance from them whether they were separated or unseparated from him at the time of his death if they have no ancestral estate belonging to him in their hands). The texts of Manu, Yāj. I. 76 and Nār. are held on p. 598 of that report to impose a personal obligation enforceable by the State. Vide *Raja Rama Rao v. Raja of Pittapur* 45 I. A. 148 at p. 154 where it is stated that the grandson is not included under the word 'son' and a grandfather is under no personal obligation to maintain a grandson if there is no ancestral property in his hands.

1560. पतितामपि तु मातरं बिभृयादनभिभाषमाणः । बौ. ध. सू. II. 2. 48 ; पतितः पिता परित्याज्यो माता तु पुत्रे न पतति । वसिष्ठ 13. 47 ; अत्याज्या माता तथा पिता सपिण्डा गुणवन्तः सर्वे वात्याज्याः । यस्त्यजेत्कामादपतितान् स दण्डं प्राप्नुयाद् द्विगुणं शतम्, शङ्खलिखित q. by अपरार्क p. 823 on या. II. 237.

Manu VIII. 389 prescribes that the man who abandons and does not maintain his parents, wife and son, when they are not *patita*, should be fined 600 *paṇas* by the king. Nār. also (S. B. E. 33 p. 184 verse 95) provides punishment for such a husband. Yāj. I. 76 states that if a man abandoned a wife who was obedient, diligent, the mother of a son and agreeable in speech he was to be made to give one third of his property to the wife and to maintain her, if he had no property. Viṣṇu Dh. S. V. 163 made the husband punishable like a thief if he abandoned his blameless wife. Kauṭ. II. 1 prescribes[1561] that if a man being able fails to maintain his child or wife, parents, minor brothers and sisters, unmarried daughters, widowed daughters, when these are not *patita*, should be fined twelve paṇas. These dicta have been followed even by modern courts in India. In *Subbarayana v. Subbakka*[1562] it has been held that a son is bound to maintain his aged mother whether he has inherited property from his father or not.

The manager of a joint Hindu family is under a legal obligation to maintain all male members of the family, their wives and children. Nārada states[1563] that if any one among several (undivided) brothers dies without issue or becomes an ascetic the rest should take the estate and give maintenance to his wives till their death, provided they keep the bed of their husband unsullied but that they may cut off the maintenance if they (wives) behave otherwise. This is because the surviving brothers succeed to the estate in which the deceased had an interest during his lifetime. This is made quite clear[1564]

1561. अपत्यदारं मातापितरौ भ्रातॄनप्राप्तव्यवहारान् भगिनीः कन्या विधवाश्चाबिभ्रतः शक्तिमतो द्वादशपणो दण्डोऽन्यत्र पतितेभ्योऽन्यत्र मातुः। कौ. II. 1. p. 48.

1562. 8 Mad. 236, referred to in *Surampalli v. Surampalli* 31 Mad. 338 at p. 342.

1563. This verse of Nār. is quoted in *Bhikubai v. Hariba* 49 Bom. 459, 463, 27 Bom. L. R. 13 at p. 16.

1564. तथा च नारदः। याः पत्न्यो विधवाः साध्व्यो ज्येष्ठेन श्वशुरेण वा। गोत्रजेनापि वाच्येन भर्तव्याच्छादनाशनैः॥ धनग्राहिणेति सर्वत्र ज्येष्ठादौ शेषो द्रष्टव्यः। धनग्रहणनिमित्तत्वाद् भरणस्य। अत्र विशेषमाह कात्यायनः। स्वर्याते स्वामिनि स्त्री तु ग्रासाच्छादनभागिनी। अविभक्तधनांशं तु प्राप्नोत्यामरणान्तिकम्। धनांशं यावता धनेन वत्सजीवनं धनसाध्यं तु नित्यनैमित्तिककर्म काम्यं व्रतादिकं सिध्यति तावद्धनमित्यर्थः। तु शब्दो वा शब्दार्थे। ...एतावद्धनसम्पादकक्षेत्रांशं वा प्राप्नोतीत्यर्थः। स्मृतिच. II. p. 292 and व्य. म. p. 516. (The passage of नारद in Mr. Gharpure's edition is rather corrupt). The व्य. मयूख p. 139 quotes कात्यायन; this verse of Kātyāyana is quoted in *Lakshman v. Satyabhamabai* 2 Bom. 494 at p. 511.

in the Sm. C. explaining a verse of Nār. viz. 'widows that are virtuous must be maintained with food and raiment by the eldest brother (of the deceased) or by the father-in-law or by any other gotraja' on which it remarks: "The words 'by him who takes the estate' must be understood before all the words such as 'the eldest brother'". Kāt. (922) states, 'when the husband goes to heaven the wife is entitled only to food and raiment if he was unseparated or she may get a share in (ancestral) property till her death'. The Sm. C. remarks that as maintenance depends upon taking wealth, Kāt. provides two alternatives. In cases too numerous to cite this has been followed by all High Courts. Similarly an heir is bound to maintain out of the estate taken by him those persons whom the deceased was legally or morally bound to maintain. Those persons who are excluded from inheritance or partition are entitled to maintenance and their virtuous wives and unmarried daughters also are entitled to be maintained (Yāj. II. 140-142 Manu IX. 202, Vas. 17. 54). The Baud. Dh. S. (II. 2. 43-46)[1565] provides that those who are past undertaking transactions (i. e. are very old) should be given food and raiment and also those who are blind, idiotic, impotent, immersed in vice and suffering from (incurable) diseases, and those that engage in prohibited acts, except the *patita* and his issue. Devala (quoted in the V. Mayūkha p. 165) has a similar passage, 'when the father is dead (or even when being alive he makes a partition) the impotent, the leper, the lunatic, the idiot, the blind, an outcast and his offspring, a person wearing a heretical sect mark—these are not entitled to a share of the heritage; to these except the *patita* food and raiment are to be given'. These persons suffer from a personal disqualification and maintenance is given to them in lieu of a share not because their status is denied but because they are incapable of management and enjoyment of property. Vide *Raja Ram Rao v. Raja of Pittapur.*[1566]

The general principle is that an heir is legally bound to provide out of the estate taken by him as heir maintenance for those persons, male or female, whom the late owner was morally or legally bound to maintain. For example, if there is no ancestral property the father-in-law who possesses only self-

1565. Vide note 1151 above for बौ. ध. सू. II. 2. 43-46. This and the text of Devala are quoted in *Murarji v. Parvatibai* 1 Bom. 177 at p. 183.

1566. 45 I. A. 148 at p. 154.

acquired property is not legally bound to maintain his daughter-in-law (widow of a predeceased son); but on the death of the father-in-law, his heir i. e. son, widow, or daughter would be legally bound to maintain a widowed daughter-in-law.[1566a] The Bombay High Court, however, adds the condition that the predeceased son must have been in union with his father when he died ; vide 23 Bom. 608.

By Act XVIII of 1937 it has been provided that in a family governed by the Mitākṣarā the widows of deceased coparceners such as the daughter-in-law and the grand-daughter-in-law are entitled to their husband's interest. The Act does not expressly state that their rights to maintenance are taken away. In many cases such widows may prefer to take a share instead of being allotted only maintenance and so far the law of maintenance will tend to become obsolete.

Another important question is what is the effect of unchastity on the right to maintenance ? As regards the wife's right to maintenance and the effect of unchastity thereon during the husband's lifetime, vide H. of Dh. vol. II pp. 571-73 above. Manu XI. 176 says that a wife guilty of adultery should be confined by the husband in the same house and should be made to undergo the same penance as a man guilty of adultery has to undergo ; Yāj. I. 70 also says that a wife guilty of adultery should be deprived of her status as a wife as to wealth and religious observances, should be given bare maintenance and should be confined to a part of the house. Unchastity on the part of a Hindu widow disentitles her to maintenance under certain circumstances Vas. 21. 10 provides that four classes of wives must be abandoned viz. one who yields herself to her husband's pupil or to his *guru* and especially one who attempts the life of her husband or who commits adultery with a man of a degraded caste and in 21. 12 Vasiṣṭha states that the wives of brāhmaṇas, kṣatriyas and vaiśyas, who commit adultery with a śūdra, may be purified by penance if no child is born (of the adulterous intercourse) but not otherwise'. It is provided by Yāj. I. 72 that if a woman (of the three higher castes) conceives through adultery with a śūdra or kills her foetus or attempts the death of her husband or is guilty of grave sins (such as brāhmaṇa-murder) she shall be abandoned.

1566a. Vide *Rajani Kanta v. Sajani Sundari* 61 I. A 29; *Yamunabai v. Manubai* 23 B. m. 608.

Manu IX. 188 provides that when women become *patita*, the rite called *ghaṭasphoṭa* (the procedure of which may be seen at p. 388 of the H. of Dh. vol. II and in note 1168 in the Appendix to this volume) may be performed, but they must be given food and raiment and they must be provided with a hut near the family house. Yāj. III. 296 has a similar provision. The result is that there is no text which provides that a widow who is once unchaste must be deemed unchaste for ever and must for ever forfeit her claim even to a starving maintenance even if she repents, reforms her ways and gives up an immoral life. On the contrary the texts say that widows guilty of adultery are purified by penance and may be restored to all their social privileges. For example, Manu[1567] XI. 189 says generally about all persons that after they perform the appropriate *prāyaścitta*, they should not be rebuked or avoided (but should be restored to all social intercourse). The Mit. on Yāj. I. 72 expressly says that the abandonment of even such women as are referred to in that verse consists in not associating with them conjugally and in religious matters, but does not mean that they are to be driven out of the house.[1568]

On Yāj. III. 297 (which states that in the case of women there are three peculiarly grave sins viz. adultery with a low-caste man, killing the foetus and attempt to murder the husband) the Mit. sums up the whole position as follows: (1) total abandonment of women for the four grave sins laid down in Vas. 21. 10 takes place when they do not perform penance; (2) women guilty of adultery not of the aggravated kind mentioned in Vas. 21. 10 are to be given starving maintenance that would keep body and soul together and are to be lodged in a hut near the house and to be afforded protection (Yāj. I. 70 and III. 296), even if they do not perform the requisite penance. But the Mit. is silent as to the claim to maintenance of widows that at first led a life of incontinence (but not of the aggravated kind) and subsequently reformed their ways. But from Manu XI. 189 it may be inferred that widows not guilty of

1567. एनस्विभिरनिर्णिक्तैर्नार्थं किंचित्सहाचरेत्। कृतनिर्णेजनांश्चैव न जुगुप्सेत कर्हिचित्॥ मनु XI. 189 = विष्णुधर्मसूत्र 54. 31. अपरार्क p. 98 says on या. I. 70, कृतप्रायश्चित्ता तु संव्यवहार्या भवति—कृतनिर्णे ... कर्हिचित्—इति मनुवचनात्।

1568. त्यागश्चोपभोगधर्मकार्ययोर्न तु निष्कासनं गृहात्तस्याः। निरुन्ध्यादेकवेश्मनि—इति नियमात्। मिता. on या. I. 72. निरुन्ध्यादेकवेश्मनि is मनु XI. 176. This passage of the Mit. is quoted in *Bhikubai v. Hariba* 27 Bom. L. R. 13 at p. 20 (= 49 Bom. 459 at p. 467).

aggravated adultery that have undergone the proper *prāyaścitta* and that return to decent life would have been entitled to ordinary maintenance from the period they turned over a new leaf.[1569]

A brief reference to the modern case law on this point may be made here. In *Bhikubai v. Hariba*[1570] Sir Lallubhai Shah (after an elaborate examination of ancient and medieval authorities and decided cases) held that a widow who had been unchaste, but who is proved to have given up the life of unchastity is entitled to bare maintenance. In *Lakhmichand v. Anandi* the Privy Council make the general observation:[1571] 'It is true that the right of a Hindu widow to maintenance is conditional upon her leading a life of chastity and that she loses that right if she becomes unchaste'. In *Kisanji v. Lakshmi*[1572] it was held that subsequent unchastity disentitled a widow from recovering maintenance, even though it is claimable under an agreement made with the deceased husband's father and brother. In *Musammat Ganga v. Ghasita* 1 All. 46 (F. B.) it has been held that unchastity does not incapacitate a daughter from inheriting strīdhana. In *Angammal v. Venkata* 26 Mad. 509 the same rule was laid down.

The illegitimate son born of a śūdra concubine to a man of the three higher castes appears to have been held entitled to maintenance from very early times. Gaut. 28. 37 provides, 'the son from a śūdra woman of a man (of the three higher varṇas) who is without issue receives maintenance (lit. source of maintenance), if he is obedient, in the same way as a pupil might receive'. And Gautama (28. 43) extends the same rule to the offspring of *pratiloma* unions. Vide p. 601 above and note 1135 for the text of Gaut. and Bṛ. on the point. Manu IX.

1569. Vide *Sathyabhama v. Kesavacharya* 39 Mad. 658 at p. 660 where it is said, 'But in none of these texts is there any provision for a woman who has repented and was subsequently leading an honest life. It is not to be presumed from the omission to provide for such a contingency that the resumption once made is to be irrevocable and that the fallen woman who had reformed is to be denied even a starving allowance'. Vide also *Bhikubai v. Hariba* 27 Bom. L. R. 13 at pp. 23 and 26 and *Ramkumar v. Bhagawanta* 56 All. 392, 394.

1570. 27 Bom. L. R. 13 = 49 Bom. 459.

1571. 62 I. A. 250 at p. 255.

1572. 33 Bom. L. R. 510. But this case seems to be in conflict with the decision in *Shivlal v. Bai Sankli* 33 Bom. L. R. 490.

155 also provides that the son of a man of the three higher castes from a śūdra woman (not married to him) is not entitled to share in the ancestral estate. Br̥. (S.B.E. 33 p. 374 v. 31) states[1573] that an obedient and meritorious son born from a woman of the śūdra caste to a man who has no other child should get maintenance and that the sapiṇḍas should divide the rest of the wealth of the deceased. Both the Mit. and the V. Mayūkha, while explaining Yāj. II. 133–134 about the rights of the illegitimate son of a śūdra from a śūdra woman, remark that one who is begotten on a *dāsī*[1574] by a member of the regenerate classes is not entitled to a share even at the father's choice nor to a half share after his father's death but that he is only entitled to maintenance.[1575]

There is a good deal of case law on this subject, but much of it is irrelevant in this treatise. The right of maintenance attaches in the first instance to the separate property of the putative father and if the latter leaves no such property but was a member of a joint family it attaches to the property of the joint family of which the putative father was a member.[1576] It has further been held that it does not matter if the woman was not a dāsī (a slave) or a permanent concubine in the exclusive keeping of a man or that the intercourse was adulterous.[1577] It has been also held that the illegitimate son's right to maintenance is a personal right and cannot be transmitted to his son[1578] and that maintenance has to be provided for him till his death[1579] (and not merely up to his attaining majority),

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1573. अनपत्यस्य ... समवाप्नुयुः ॥ बृह. cited above in *n.* 1135 and q. by दायभाग IX. 28, व्य. मयूख (p. 103). This verse of Br̥. is cited and translated in *Krishnayyan v. Muttusami* 7 Mad. 407 at p. 412 and in *Rajani Nath v. Nitai* 48 Cal. 643 (F. B.) at p. 686.

1574. For the meaning of *dāsī* vide above p. 602 *n.* 1137.

1575. अत्र च शूद्रग्रहणात् ... किं त्वनुकूलश्चेज्जीवनमात्रं लभते । मिता. on या. II. 133–134 q. above in *n.* 1136. Vide व्य. मयूख p. 104 and व्य. प्र. p. 488 for almost the same words. The word जीवनमात्रं does not mean 'bare maintenance' or 'bare necessities of life,' has no reference to the amount of maintenance but is used to distinguish it from *aṁśa* (share). Vide *Hiralal v. Meghraj* I. L. R. (1938) Bom. 779 at pp. 787 and 794.

1576. *Ananthaya v. Vishnu* 17 Mad. 160; *Subramania v. Valu* 34 Mad. 68; *Vellaiyappa v. Natarajan* 58 I. A. 402; *Hiralal v. Meghraj* I. L. R. (1938) Bom. 779 = 40 Bom. L. R. 935.

1577. Vide *Rahi v. Govind* 1 Bom. 97.

1578. *Roshan Singh v. Balwant Singh* 27 I. A. 51 = 22 All. 191.

1579. *Hargobind v. Dharam Singh* 6 All. 329; *Kuppa v. Singaravelu* 8. Mad. 325; *Hiralal v. Meghraj* I. L. R. (1938) Bom. 779.

except in Bengal.[1580] The fact that the texts employ the word "śūdrāputra" (in the masculine gender) has been interpreted by the decided cases as involving that an illegitimate daughter is not entitled under Hindu Law to maintenance. Vide *Parvati v. Ganpatrao*[1581] and *Vellaiyappa v. Natarajan.*[1582]

Another frequent subject of litigation in modern times has been a concubine's right of maintenance under the Hindu Law. It has been held that a concubine has no legal right to claim maintenance from her paramour during the latter's lifetime, as he can discard her at any time and as she cannot compel him to keep her.[1583] So also a Hindu is not entitled to transfer joint family property to a concubine for her maintenance during his lifetime.[1584] But on the death of the paramour a great difference is made in the rights of a concubine that was in his *exclusive keeping till his death.* Such a concubine has been held to possess a legal right to maintenance payable out of the estate, ancestral or self-acquired as the case may be, in the hands of those who take it after the death of the paramour. The rights of women, who are not wives, to maintenance are based mainly on two texts, viz. of Nārada and Kātyāyana, that are explained in the Mit., the V. Mayūkha and other medieval works. Nārada says:[1585] 'A king devoted to dharma should give maintenance to the women (*strī*) of a deceased person (when the king succeeds as heir by escheat), except when the deceased person is a brāhmaṇa'; while Kāt. (931) states,[1586] 'heirless property goes to the king after keeping aside (wealth sufficient to provide) for the women (*yoṣit*), the dependents (or servants) and the funeral rites and śrāddhas (of the deceased)'.

1580. *Nilmoney v. Baneshur* 4 Cal. 91.

1581. 18 Bom. 177, 183.

1582. 50 Mad. 340.

1583. *Ramanarasu v. Buchamma* 23 Mad. 282; *Ningareddi v. Lakshmawa* 26 Bom. 163; *Akku v. Ganesh* 47 Bom. L. R. 5 (F. B.) at p. 12.

1584. *Thakur Rab Prasad v. Chhotay Munwan* 12 Lucknow 469.

1585. अन्यत्र ब्राह्मणात् किन्तु राजा धर्मपरायणः। तत्स्त्रीणां जीवनं दद्यादेष दायविधिः स्मृतः॥ नारद (दायभाग 52), q. by the Mit. on Yāj. II. 114, परा. मा. III. p. 535.

1586. अदायिकं राजगामि योषिद्भृत्यौर्ध्वदेहिकम्। अपास्य श्रोत्रियद्रव्यं श्रोत्रियेभ्यस्तदर्पयेत्॥ कात्या. q. by मिता. on या. II. 114, परा. मा. III. p. 535, व्य. म. p. 139. This verse is quoted in *Savitribai v. Luxmibai* 2 Bom. 573 at p. 608, *Yashvantrao v. Kashibai* 12 Bom. 26.

Kauṭ. also similarly prescribes (III.[1587] 5. p. 161), 'the king takes heirless property except that of *śrotriyas*, setting apart (wealth) for the maintenance of women (of the deceased), for funeral rites and for poor or wretched (dependents of the deceased)'. The Mit., the V. Mayūkha, the Par. M. and others state that the verses of Nār. and Kāt. refer to *avaruddha-strī* alone, since the word *patnī* (duly wedded wife) does not occur therein, but only the words '*yoṣit*' and '*strī*'.[1588] There has been a great divergence of views in the decided cases about the significance of *avaruddha strī*. It is generally rendered as a concubine or mistress in the exclusive keeping of a person till the latter's death'. Several conditions are necessary to constitute a woman an *avaruddha strī* capable of claiming maintenance from the estate of her deceased paramour in the hands of his sons or other heirs. In the first place, she must have been continuously and exclusively in his keeping till his death. How long she should have been thus in his keeping cannot be fixed by any hard and fast rules. She must have been so long in his keeping continuously till his death that it can be said that the connection had become permanent. In *Bai Nagubai v. Bai Monghibai* a period of five years was deemed to be sufficient. In the second place the concubine[1589] must observe sexual fidelity to her deceased paramour after his death in order to be able to claim maintenance from the estate in the hands of his heirs or successors. In *Bai Monghibai v. Bai Nagubai*[1590] a third condition was laid down viz. that the connection of the concubine with the deceased paramour should be perfectly open and recognized and she must have been kept practically as a member of the family. But in *Bai Nagubai v. Bai Monghibai*[1591] the Privy Council overruled the above decision and held that in order to entitle a mistress to maintenance it is not necessary that she should have resided in the same

1587. अदायादकं राजा हरेत्स्त्रीवृत्ति-प्रेत-कार्यवर्जमन्यत्र श्रोत्रियद्रव्यात्। तत् त्रैविद्येभ्यः प्रयच्छेत्। कौ. III. 5. p. 161, Dr. Sham Shastri's translation (p. 205) 'property for which no claimant is found shall go to the king, except the property of a woman, of a dead man for whom no funeral rites have been performed or of a niggardly man' is clearly inaccurate and hardly in consonance with the actual words of the text.

1588. यदपि कात्यायनेनोक्तं-अदायिकं ...... पर्येत्-इति ...... तदप्यवरुद्धस्त्रीविषयं योषिद्ग्रहणात्। नारदवचनं च अन्यत्र ...... स्मृतः—इत्यवरुद्धस्त्रीविषयमेव। स्त्रीशब्दग्रहणात्। मिता. on या. II. 114.

1589. *Yashvantrao v. Kashibai* 12 Bom. 26 at p. 28.

1590. 24 Bom. L. R. 1009 = 47 Bom. 401.

1591. 53 I. A. 153 = 50 Bom. 604 = 28 Bom. L. R. 1143.

house with the deceased together with his wife and the ordinary members of his family. And in *Dayavati v. Kesarbai*[1592] it was further held that the concubine need not prove that she was recognized by the family of the deceased or that his relationship with her was known to the family. A further restriction was imposed by the case of *Anandilal v. Chandrabai*[1593] that the intercourse with the paramour should not have been adulterous. But this case has been overruled by a recent Full Bench decision in *Akku v. Ganesh*[1594] which holds that a permanently kept concubine is entitled to be maintained out of the estate of her deceased paramour, although she has a husband living (who was examined in the case as a witness), provided she observes sexual fidelity to the deceased paramour after his death. It becomes, therefore, necessary to examine the Sanskrit medieval commentaries and digests in order to arrive at a correct interpretation of the expression '*avaruddha strī*'. Strangely enough, the Mit. does not define the word in the section on dāyabhāga, but only under 'strī-saṅgrahaṇa'. Yāj. II. 290 provides, 'a man should be awarded a fine of fifty *paṇas*, if he has intercourse with dāsīs that are *avaruddhā* or that are *bhujiṣyā* and also (other women such as prostitutes and *svairiṇīs*), even though ordinarily they (i. e. dāsīs and others) are approachable (without incurring the consequence of punishment)'. The Mit. explains that the word 'ca' placed after 'bhujiṣyāsu' in Yāj. II. 290 is meant to include *veśyas* and *svairiṇīs* along with bhujiṣyās. Acc. to the Mit. the verse prescribes the same fine for intercourse with three kinds of women, viz. dāsīs that are avaruddhā, dāsīs that are bhujiṣyā and other women such as *veśyās* (who are ordinarily approachable by all males of their own or higher castes) and *svairiṇīs* (who abandon their husbands and resort at their desire to some other male of their own caste, as defined by Yāj. I. 67). A woman though originally a *veśyā* or a *svairiṇī* may be known to be kept by a man. In that case if another man approaches her, Yāj. II. 290 declares that he would be liable to be fined in the same amount as if he approached an avaruddhā dāsī or bhujiṣyā, because being in the keeping of another at the time she would be like a wife (as the other two classes do) so far as punishment for approaching a kept woman is concerned. This verse is not concerned with the maintenance

1592. 36 Bom. L. R. 61.

1593. 48 Bom. 203 = 26 Bom. L. R. 63.

1594. 47 Bom. L. R. 5 (F. B.).

of women at all. The Mit. here defines 'avaruddhā dāsī' as "a slave woman who is prohibited by her master from intercourse with other men with an order to stay in the master's house alone in order that there may be no loss of attendance (on the master)." The Mit. defines a *bhujiṣyā dāsī* as 'one who is restricted (as to enjoyment) to certain definite males' (*puruṣaniyata-parigrahā bhujisyāḥ*).[1595] It is worthy of note that the Mit. employs different phraseology in defining the two words. In defining a bhujiṣyā it employs the word '*niyata*', which generally means 'fixed or definite', while in defining 'avaruddhā' it employs the word 'niruddhāḥ' meaning 'prevented or prohibited'. If the two words were intended to convey the same meaning, there is no reason why the Mit. should not have employed the same word (*niruddhā*) in defining a bhujiṣyā. The difference between an avaruddhā dāsī and a bhujiṣyā is that the former is ordered to stay in the master's house, while the bhujiṣyā is not so ordered and secondly the avaruddhā is forbidden to have sexual intercourse with any one except the master, while the bhujiṣyā is not so forbidden, but she is to restrict herself to enjoyment by certain specified males (friends or men of the master's family) and not necessarily by the master alone. This is the meaning assigned to those words by Mitramiśra in his commentary[1596] (not his digest) on Yāj. II. 290. The Mit. itself indicates the meaning of 'niyata' by saying elsewhere that ownership springs from certain fixed sources (*niyatopāyakaṁ svatvam* on Yāj. II. 114). It is respectfully submitted that the Privy Council gave a wrong interpretation of the word 'avaruddhā' in *Bai Nagubai v. Bai Monghibai*[1597]. Though slavery is now abolished in India there is no reason why the two characteristics of avaruddhā (viz. staying in the master's house and being

1595. Vide note 1134 for या. II. 290. उक्तलक्षणा वर्णस्त्रियो दास्यस्ता एव स्वामिना शुश्रूषाहानिव्युदासार्थं गृह एव स्थातव्यमित्येवं पुरुषान्तरोपभोगतो निरुद्धा अवरुद्धाः। पुरुषनियतपरिग्रहा भुजिष्याः। यद्वा दास्योऽवरुद्धा भुजिष्या वा भवेयुस्तद्वा तासु। तथा चशब्दाद् वेश्यास्वैरिणीनामपि साधारणस्त्रीणां भुजिष्याणां च ग्रहणम्। मिता. on या. II. 290.

1596. हीनां स्त्रीमित्युक्तमपवदति। अवरुद्धास्वित्यादि। दासी पुरुषविशेषेण विवाह्या परिगृहीता च त्रिविधा। एकेन पुरुषेण स्वभोगार्थं पुरुषान्तरभोगतो निरुद्धा, भुजिष्या वेश्या चेति। भुजिष्या च स्वमित्रपुरुषान्तरोपभोगविषयः स्वपरिचर्याकारिणी। ... एवं च सकामाया वेश्याया एकेन बहुभिर्वाभिगमे दण्डाभावः। अवरुद्धाभुजिष्ययोरपि नियतपुरुषस्याभिगमे दण्डाभावः, गम्यास्वित्यभिधानादिति मिताक्षरास्वरसः। मित्रमिश्र in com. on या. II. 290.

1597. 53 I. A. 153 = 50 Bom. 604.

exclusively kept by the master) stated by the Mit. should not have been strictly adhered to by the Privy Council, particularly when they were holding heirs liable for the maintenance of kept mistresses, which is hardly ever allowed in any other system of law. With the greatest respect to the Full Bench, it must be said they went wrong in holding that *bhujiṣyā* means 'a mistress who is restrained from intercourse with other persons (other than the master)' and in holding that the only distinction between an avaruddhā and a bhujiṣyā is that the former is required to stay in the house of the paramour, while the latter is not (47 Bom. L. R. at pp. 13 and 22). The learned judges have not correctly interpreted the word 'niyata' and also the explanation of 'bhujiṣyā' given by the Bālambhaṭṭī[1598]. The meaning of the Bālambhaṭṭī was misunderstood on account of the wrong meaning attached to the word 'niyata'. What the Bālambhaṭṭī means in explaining the definition of bhujiṣyā is 'one who is to be enjoyed by certain definite males only other than the master' (i. e. by the master and also certain defined males) and it does not mean 'who is forbidden to be enjoyed by males other than the master'.

The F. B. further rely upon a passage of the Mit. in support of their conclusion (47 Bom. L. R. at pp. 14 and 22) On the question of what properties are impartible, the Mit. on Yāj. II. 119 quotes Manu IX. 219 viz. 'clothes, conveyances, ornaments, cooked food, water (wells &c.), women, *yogakṣema* and pastures (or ways)—these they declare are impartible.' The Mit. explanation[1599] of the word 'striyaḥ' may be translated as follows: 'striyaḥ' here means 'female slaves; if they are uneven in number they should not be divided by taking their price into consideration, but they are to be made to work in turns (for the separated members of the family), but as regards women kept by the father such as svairiṇīs and the rest, they are not to be divided by the sons even though they be even in number". It is difficult to see how this passage supports the Full Bench decision. That

1598. पुरुषान्तरेति । स्वभोग्यता तु नैवेति भावः । पुरुषेति स्वामिभिन्नेत्यर्थः । बालम्भट्टी on या. II. 290.

1599. स्त्रियश्च दास्यो विषमा न मूल्यद्वारेण विभाज्याः पर्यायेण कर्म कारयितव्याः । अवरुद्धास्तु पित्रा स्वैरिण्याद्याः समा अपि पुत्रैर्न विभाज्याः । स्त्रीषु च संयुक्तास्वविभागः—इति गौतमस्मरणात् । मिता. on या. II. 119; the सुबोधिनी remarks, 'पित्रवरुद्धस्वैरिण्यादीनां समानामप्यविभाज्यत्वे गौतमवचनं दर्शयति स्त्रीषु च संयुक्तास्विति । संयुक्तासु उपभुक्तासु ....तास्विति यावत् ।'. अरक्षिता गृहे रुद्धाः पुरुषैराप्तकारिभिः—इति तेनैवोक्तत्वात् । एवं च रुद्धामित्यत्र गृहेऽवरुद्धामित्यध्याहर्तव्यम् । स्मृतिच. II. p. 321.

passage can be explained in two or three different ways. In the first place, the Mit. having itself clearly distinguished and defined three classes, viz. avaruddhā, bhujiṣyā and svairiṇīs (together with veśyas also) it cannot be lightly supposed that elsewhere it gives up that distinction. Therefore it would be difficult to say that here (on Yāj. II. 119) the Mit. means that svairiṇīs are also the same as avaruddhās. Hence the interpretation should be that women who are avaruddhā (kept exclusively by the father) and even other women also like svairiṇīs (who had sexual connection with the father though not as avaruddhā) should not be divided i. e. a 'ca' should be understood after 'svairiṇyādyāḥ'. Or it is possible to hold that the word 'avaruddhā' in that passage is not employed in the strict technical sense (as defined by the Mit. on Yāj. II. 290), but in its etymological sense meaning 'women who are svairiṇīs and the like that are taken into his harem (or under his protection) by the father should not be divided'. This interpretation derives support from the explanation offered by the Subodhinī (which is repeated almost verbatim by the Bālambhaṭṭī) about the text of Gautama quoted by the Mit. that 'saṁyukta' in Gaut. means 'enjoyed' or 'confined' (in the house). This shows that the words 'ruddhā' and 'avaruddhā' were used in the etymological sense by distinguished writers. The Sm. C. II. p. 321 while explaining the word 'ruddhā' in Manu IX. 12 applied to a wife guilty of adultery explains it as meaning 'confined in a part of the house' (gṛhe avaruddhām). When the Mit. states (p. 811) that the verses of Nār. and Kāt. refer to avaruddhā strī it follows that these verses do not refer to bhujiṣyā, who would therefore be deemed not entitled to maintenance at all.

There is a large body of caselaw about the right of a widow in a joint Hindu family to reside in the family house, about the right of a daughter-in-law against her deceased husband's father who has no ancestral property in his hands and against the heirs of the father-in-law, about the amount of maintenance to be allowed to a widow and about the rate at which arrears of maintenance are to be allowed, about the period for which arrears may be awarded, about making the maintenance a charge on the estate in the hands of the heirs, about varying the rate of maintenance fixed by a decree or an agreement &c. These are not quite germane to the present volume, particularly because most of the decisions on these

matters are not based on the words of the smṛtis or of the medieval digests, but are based on logic and principles of justice and equity. But there is one matter which deserves a passing reference. Ancient Hindu Law attached the highest spiritual importance to the payment of debts (vide pp. 414-417 above). Therefore debts contracted by a Hindu are held by the Courts to take precedence over the right of maintenance of a man's wife, his infant child or his widow after his death.[1600] Similarly debts contracted by the manager of the joint family of which the widow's husband was a member would take precedence over the widow's right of maintenance, provided the debts were for the benefit of the family or were for legal necessity.

The last *vyavahārapada* is *prakīrṇaka*, which is defined by Viṣṇu Dh. S. 42. 1 as 'miscellaneous' (yadanuktam tat prakīrṇakam) or by Nār. as matters that were to be set in motion by the king himself (vide note 331). These have been dealt with above and do not require any further treatment here.

At the end of this section on Vyavahāra it would not be out of place to say a few words about wills. Owing to the joint family system and the custom of adoption testamentary dispositions did not come into vogue in ancient India. Among the many kinds of documents (*lekhya*) mentioned by Kauṭ., Bṛ., Kāt. and others cited above there is no term for a document which can convey the idea of a modern will. But it need not be supposed that the idea had not at all dawned upon the minds of people before the advent of the British[1601]. Wills were known among Mahomedans and contact with them would naturally suggest the idea of a will. Oral or written instructions by a man expecting death to his heirs intended to affect the disposal of his property must have been given occasionally and should not

1600. Vide *Lakshman v. Satyabhamabai* 2 Bom. 494 at pp. 499, 505; *Radhabai v. Gopal* 45 Bom. L. R. 980 at p. 991.

1601. In *Nagalutchmee Ummal v. Gopoo Nadaraja* 6 Moo. I. A. p. 309 the P. C. said (at p. 344): 'It must be allowed that in the ancient Hindu Law, as it was understood through the whole of Hindustan, testamentary instruments in the sense affixed by English lawyers to that expression were unknown; and it is stated by a writer of authority (Sir Thomas Strange) that the Hindoo language has no terms to express what we mean by a will. But it does not necessarily follow that what in effect though not in form are testamentary instruments which are only to come into operation and affect property after the death of the maker of the instrument were equally unknown.

be supposed to have been entirely unknown. Verses 341–359 of the Rājataranginī IV. appear to embody the political testament of king Lalitāditya of Kashmir in the first half of the 8th century. Kāt. (566) makes a very near approach to the modern conception of a will[1602]. He says, 'if a gift was promised by a man for a religious purpose whether when in good health or when afflicted with disease, the son should be made to pay it, if the father dies without giving it over.' Here the mere declaration of the intention of a person was made enforceable after his death against the son or other heir. Bṛhaspati's verse saying that a promise or direction to take effect after the death of the promisor was not ordinarily enforceable has already been quoted above (n. 823). In the quarterly of the Bhārata-itihāsa-saṁśodhaka Maṇḍala of Poona, vol. XX p. 210 (for May 1940) there is a letter (dated 1775 A. D.) written by one Naro Babaji, who, after referring to his illness, provides on a generous scale for his funeral and śrāddha expenses and makes dispositions in favour of his daughter-in-law, of another widow, and for the marriage of his kinsman's sons and distribution of the balance of his assets[1603].

1602. स्वस्थेनार्तेन वा देयं श्रावितं धर्मकारणात् । अदत्त्वा तु मृते दाप्यस्तत्सुतो नात्र संशयः । कात्या. q. by अपरार्क p. 782, वि. चि. p. 16, व्य. मयूख p. 206. 'श्रावयित्वा यदि दानमकृत्वैव मृतस्तदा तद्दायादैस्तद्देयम् । अप्रयच्छन्तो राज्ञा दाप्याः । एतच्च धर्मार्थे प्रतिश्रवणे सति द्रष्टव्यम् । अपरार्क p. 782.

1603. यादी चिरंजीव राजश्री माधवराव यांसि नारो बाबाजी असिरवाद उपरि सन ११८५ मन्मथनाम संवत्सरे आपले शरीर आज महिनाभर वेथा झाली आहे न जाने शरीराचा भरवसा नाही आपला धर्माचा ऐवज अन्तकाल वगैरे ठेवला आहे तो येणेप्रमाणे :

धर्म करावा बीतपशील

५००० आपण जिवंत असतां आपले हाते प्रायश्चीत व हिरण्यद्वारा गोशत वगैरे प्रसंग आल्यास करणें

१०००० क्रियेस लावावे

२००० मासिक वर्षश्राद्ध मिळोन

× ×

१५००० आपले गयावर्जन व कासीत एक गायत्रीपुरश्चरण व फिरकोल धर्म

५००० यासिवाय फिरकोल धर्म कासीस अथवा आन्य क्षेत्रीं

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(*Continued on the next page*)

One of the earliest wills to come before the British Indian Courts was that of the notorious Umichand[1604] (who died in 1758 A. D.). Bengal Regulation XI of 1793 recognized by section VI the power of a Hindu proprietor to make a will or declaration giving, prior or subsequent to 1st July 1794, his entire landed estate to his eldest son or next heir or other son or heir or to any person or persons. In a Bombay case the will of a Hindu made in 1789 is referred to[1605]. A Pundit of the Recorder's court of Bombay gave it as his opinion in 1812 A.D., 'there is no mention of wills in our *Shaster*; therefore they ought not to be made' (vide Strange's Hindu Law, vol. II p. 449). In I. L. R. (1940) 1 Cal. 415 at p. 424 the Privy Council observe that the Hindu will in its present form is a development since the middle of the 18th century.

It is beyond the scope of this work to dilate on the modern Acts dealing with Testamentary dispositions such as the Indian Succession Act (Act 39 of 1925).

Now that the foregoing lengthy presentation of the ancient and medieval Hindu judicial procedure and substantive law has been brought to a close a few general observations may be indulged in here. The Hindu Law of pleading and evidence compares favourably with similar laws of many other countries and has extorted the admiration and encomiums of such

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(*Continued from the last page*)

× ×

याशिवाय कलमें

५००० राधाबाई सून तिजपाशीं वस्त्रा अजमासे पाचा सहा हजाराच्या आहेत यासिवाय काशीस गेली आथवा आपले बापाचे घरीं राहिली तर तीस रुपये द्यावे

३००० तीर्थस्वरूप दादाचे क्रियेस लावावे

५०० भाचेसून रखमाबाईस वर्षास धर्माकरितां ५० रुपये वृतच आहा पुढें तुम्हापासोन आईल तेव्हां तीस द्यावे

१५००० तुम्ही आपले तीन्ही मुलाचे लग्नास खर्च करावा

५३५०० सदरहूप्रमाणे करार

सदरहू रुपये जाऊन बाकी राहिल त्यांत तुम्ही विठोबाचें व त्याचे बायकोचें आपणापाशीं ठेवून चालवावें पुढे तो थोर झाल्यावर कोणी त्यास धीर देईल आणि तो तुम्हापासून वेगळा निघो लागला तर बाकी निमे त्यास द्यावे व तुम्ही निमे ठेवावे. × × × The rest gives a history of the family and how the testator earned his fortune.

1604. The will is set out in an English translation in W. A. Montriou's 'The Hindu Will in Bengal' (Calcutta, 1870) pp. 9ff.

1605. Vide *Jugmohandas v. Sir Mangaldas* 10 Bom. 528.

eminent Jurists and Judges as Sir William Jones, Sir Thomas Strange and others. For example, Sir Thomas Strange in 'Hindu Law' (1830) vol. I observes (at p. 311), "sufficient be it to observe that Hindu pleading was noticed with commendation by Sir William Jones and that, with some trifling exceptions, the Hindu doctrine of evidence is, for the most part, distinguished nearly as much as our own, by the excellent sense that determines the competency and designates the choice of witnesses with the manner of examining and the credit to be given them; as well as by the solemn earnestness with which the obligation of truth is urged and inculcated; insomuch that less cannot be said of this part of their law than that it will be read by every English lawyer with a mixture of admiration and delight, as it may be studied by him to advantage. Even the *pious perjury* which it has been supposed to sanction[1605a] being resolvable after all into no greater liberty than what our juries (not indeed with perfect approbation) have long been allowed to take, where the life of a prisoner on trial before them is at stake; credit is to be given to the pregnant brevity of the Hindu oath viz. 'what you know...declare at large and with truth' (Manu VIII. 80); as also to the noble warning, with which the subject as detailed by Manu is ushered in, that 'either the court must not be entered by judges, parties and witnesses or law and truth must be openly declared' (Manu VIII. 13)." The medieval digests made a very near approach to the modern ideal of equality of all men before the law. How even in the 20th century the much vaunted equality before the law of all people in England is far from being achieved and how it often proves quite illusory where the poor or the labouring classes are concerned is well brought out in a book entitled 'Justice in England' by a Barrister published by Victor Gollancz in 1938, especially in chapters I and VI. The Hindu jurists evolved tolerably clear and sound ideas about contracts, debts, deposits and pledges, sales, mortgages and gifts of immovable properties, developed a system of joint family rights and liabilities and laid down a peculiar law of inheritance and succession to males and females. The Hindu system of inheritance and succession

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1605a. This is a reference to the texts of Gaut. 23.29, the Mahābhārata, Manu, Yājñavalkya and others cited on p. 353 above. Sir William Jones remarks (in Works, vol. VIII p. 445, ed. of 1807): 'In the great system of contracts and the common intercourse between man and man, the *Pootee* (*Pothi?*) of the Indians and the Digest of the Romans are by no means dissimilar'.

pursues a middle course. It does not distribute the estate of a deceased person simultaneously among several heirs as under the Mahomedan Law (where the widow, the father, mother, sons and daughters of a man take the estate together if they are all alive at the time). Nor did the Hindu system confine the descent to a single person among a group of heirs of the same degree and sex as in the English system before 1926 (where the eldest son succeeded to the real estate of an intestate person).

It has further been seen how the ancient and medieval Hindu rules as to debts, adoption, partition and inheritance have been moulded for over a century by Legislation and by decisions of the Privy Council and the Courts in India. Many persons feel that the time has now arrived for the codification of Hindu Law. A Committee presided over by Sir B. N. Rau has prepared a draft code which attempts to codify certain branches of Hindu Law. From several quarters there has been vehement opposition to this draft code. The objections raised are many. It is not possible to deal here with the several objections in detail. But some of them which raise questions of fundamental importance will have to be briefly stated and answered. The first objection is that in view of Queen Victoria's proclamation of 1858 the Indian Legislature should not interfere with the customs and usages of the people that are part and parcel of the Hindu religious system. But this objection is hollow and unsubstantial and conveniently ignores what has happened during the last hundred years or so. All that the Queen proclaimed was: 'Firmly relying ourselves on the truth of Christianity and acknowledging with gratitude the solace of religion we disclaim alike the right and the desire to impose our convictions on any of our subjects. We desire it to be our royal will and pleasure that none be in any wise favoured, none molested or disquieted by reason of their religious faith or observances; but that all shall alike enjoy the equal and impartial protection of the law; and we do strictly charge and enjoin all those who may be in authority under us that they abstain from all *interference with the religious belief or worship of any of our* subjects on pain of our highest displeasure.' Notwithstanding the noble sentiments expressed here, the Indian Legislature both before and after the proclamation passed numerous laws that more or less impinged upon or affected the religious theories, sentiments and practices of millions of Hindus! The following is a list of some of the important laws of this character which will convince any one of the fact that

people have always submitted to laws passed by the Governor-General or the Legislature that prevented them from carrying out their cherished ideas and practices: Regulation XVII of 1829 which declared the practice of *Satī* illegal and a crime punishable by the courts; the Caste Disabilities Removal Act (XXI of 1850); Hindu Widows' Remarriage Act (XV of 1856, which legalises the marriages of Hindu widows notwithstanding any custom or interpretation of the Hindu Law to the contrary); the Indian Penal Code (XLV of 1860, which makes sexual intercourse by a man with his own wife that is under thirteen years of age punishable as rape); the Child Marriage Restraint Act (XIX of 1929), which makes the marriage of a male below 18 and of a female below 14 punishable as a crime; the Hindu Inheritance (Removal of Disabilities) Act (XII of 1928) which sets aside the Mitākṣarā rules about exclusion from partition and inheritance except in the case of those that have been lunatics or idiots from birth; the Hindu Law of Inheritance Amendment Act (II of 1929, which enables the son's daughter, daughter's daughter, sister and sister's son to succeed under the Mitākṣarā in that order after the paternal grandfather and before a father's brother); the Hindu Gains of Learning Act (XXX of 1930): the Hindu Women's Rights to Property Act (XVIII of 1937, which enables the widow of a deceased member of a joint Hindu family to succeed to the interest of her husband in the joint family property and to succeed to her deceased husband's separate property for the same share as that of a son). The Privy Council claimed more than 70 years ago that 'the British Government by virtue of its sovereign power asserted, as the former rulers of the country had done, the right to visit endowments of this kind (viz. temples) and to prevent and redress abuses in their management' (*Rajah Muttu Ramalinga v. Perianayagum* 1 I. A. 209 at p. 232). Non-Hindu Judges of the Privy Council and the High Courts have been interpreting and laying down the Hindu Law for over a hundred years and on many points the law declared by them has thoroughly changed the law of the smṛtis and digests. If all this has been allowed to happen without hardly a demur, there is apparently no satisfactory or convincing reason why an elected Indian Legislature the majority of whose members are likely to be Hindus should not pass an Act dealing with Hindu Law.

Another objection raised even by some retired judges of the High Court is that the present system of laying down the

Hindu Law by means of judicial decisions is quite satisfactory and there is no need of a code of Hindu Law. This objection merely shows that change is rather a painful process for most men. The present method may be a veritable El Dorado or paradise for lawyers and busy bodies fomenting longdrawn litigations. One must stand appalled at the colossal expenditure of time, labour and money which must have been involved during the last hundred years or more in fighting out doubtful points of Hindu Law from the lowest court to the Privy Council. It not unfrequently happens that after a point had been settled by a Full Bench decision of a High Court and after common people and lawyers had followed the law thus settled for fifty years the Privy Council upsets the decision on an appeal by an enterprising litigant. For example, the Bombay High Court decided in 1879 in *Ramji v. Ghamau* (6 Bom. 498) that the adoption by the widow of a deceased co-parcener, who had not her husband's express authority to adopt, was invalid, if made without the consent of the surviving co-parceners. But in 1932 the Privy Council held that *Ramji v. Ghamau* was wrongly decided and that a widow can adopt without her husband's express authority and even in the teeth of the opposition of the surviving members of her husband's family. And when an appeal was made to the principle of '*stare decisis*' the Privy Council was pleased to observe, 'It was pressed on their Lordships that *Ramji v. Ghamau* had been accepted and acted upon in the Presidency of Bombay since 1879 and that the decision should not be disturbed. But this is a belated appeal. It should have been made when *Yadav v. Namdeo* was before the Board.' To ordinary minds this dictum, speaking with the utmost respect, appears strange. If for some reason or other a certain line of argument is not placed before the Privy Council by the counsel of a private party and a wrong decision is given, is it to be supposed that all litigants are to be precluded from trying to set the wrong decision right for all time to come? The Privy Council has not seldom set right a wrong decision given by the Board in a prior appeal. In *Sahu Ram v. Bhup Singh* 44 I. A. 126 the Privy Council held that the pious duty of the son to discharge his father's or grandfather's debts does not attach while the father or grandfather is alive; but in *Brij Narain v. Mangla Prasad* 51 I. A. 129 the Privy Council held (at p. 134) that the pious duty is always there irrespective of the question whether the father or grandfather is alive or dead.

Others opine that one Code for the whole of India is not and cannot be a practicable proposition. In support of their objection they rely on the existence of the several schools of law now prevalent in the whole of India. If India desires to be a self-governing political unity in the future, there is a compelling reason why it should be governed by a single Code of Hindu Law, as it has been governed and will be governed in other substantial provinces of law by codes applicable to all alike. That will help in the direction of solidarity and will be of some use in doing away with fissiparous tendencies. There are really only two schools of Hindu Law. And the unification of Hindu Law will be helped by the abolition of the right by birth which is the cornerstone of the Mitākṣarā school and which the draft Hindu Code seeks to abolish. Many people are vehemently opposed to the change. But they forget that, what with the rule that any member of a joint Hindu family may alienate his interest for value, what with the Gains of Learning Act, the Hindu Women's Rights to Property Act and other enactments, the real core of the ancient Hindu family system has been removed and only the outer moribund shell remains (vide p. 604 above). Some are opposed to giving along with sons a share to daughters, particularly to married daughters. But here a compromise may be effected by allowing a share to unmarried daughters alone (as Yāj. II. 124 and the Mitākṣarā thereon expressly provide).

Another provision in the draft Hindu Code which has come in for severe animadversion is the provision that a woman even when taking by inheritance an estate from a male or by partition should be held to become absolute owner thereof. In the first place, if a man's agnate of the 13th degree or a male cognate up to the 5th degree takes an estate absolutely and may squander it away as he pleases, one fails to see why his own widow should not have a like power in the 20th century, whatever may have been the view of ancient works. In the second place, this objection can be met by means of a compromise, viz. that a widow inheriting her husband's estate will take only a limited estate if at the time of her husband's death any one of the compact series of heirs or any direct lineal descendant of her husband (such as a son's daughter or daughter's daughter) be alive, but she will take an absolute estate if none of these exists. Such a compromise should allay all fears about the widow unfairly disposing of the estate against near relations

like the daughter or daughter's son or husband's brother &c. There are numerous other objections, but they are in matters of detail and if once it is agreed that there should be a Code of Hindu Law passed by the Indian Legislature these matters of detail may be adjusted to the satisfaction of most people.

Similarly serious objections are raised to the provisions of the Code as regards marriages and divorce. The draft code proposes to do away with the prohibitions based on sameness of gotra and pravara. This is a desirable change and being optional should not be opposed. Some reasons for this change have been advanced in H. of Dh. vol. II. p. 498. Besides, this provision will affect only a small percentage of the Hindu population. Similarly the insistence on monogamy is opposed by many. In this case some compromise may be arrived at as regards classes to whom two wives are an economic advantage. The provisions about divorce have been overdue. Among the higher castes no divorce has been allowed on any ground whatever. Many hard cases occur where there is no redress and the draft code proposes to give relief in such cases.

On the most contentious subject of adoption the draft code, it is satisfactory to note, has made certain provisions which are in line with the suggestions put forth by me in note 1338a above.

Compelling reasons exist why Hindu Law should be codified as early as possible. Men naturally desire that they should have easy access to the laws by which they are to be governed in all their actions, dealings and relations. It is hardly a commendable or desirable state of things that people should be forced to consult lawyers or bulky textbooks every now and then and even in small and simple matters. The general outlines and provisions of Hindu Law must be within easy reach of every intelligent or inquiring Hindu. This can only happen if there is a code for all Hindus or, if that is deemed impracticable for the present, at least for a large province or for a number of provinces.

CHAPTER XXXII

SADĀCĀRA

CUSTOMS AND MODERN CUSTOMARY LAW[1606]

From Gautama[1606a] downwards many writers dilate upon the sources of *dharma*. Gautama I. 1–2 states: 'the Veda is the source (*mūla*) of dharma and also the tradition (or smṛtis) and practice of those who know the Veda'. Similarly Āp. Dh. S. (I. 1. 1. 1–2) says: 'we shall propound the acts (that produce merit) which are evolved from conventions and practices; the authority (for finding out the *dharmas*) are the conventions of those who know the dharma and the Vedas'. Vas. I. 4–7 provides: 'dharma is declared by the Vedas and Smṛtis; on failure of these two the practice of the śiṣṭas is the authority (for finding out what dharma is); a śiṣṭa however is one whose heart is free from (worldly) desires and (only) such acts of śiṣṭas are (to be held as) dharma for which no (worldly

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1606. This chapter and the next represent, with a few minor additions, two of the four lectures I delivered in November 1944 at the Bombay University as the Sir Lallubhai Shah Lecturer. I am thankful to the Syndicate of the Bombay University for permission to incorporate these two lectures in this volume.

1606a. वेदो धर्ममूलम्। तद्विदां च स्मृतिशीले। गौ. I. 1–2; अथातः सामयाचारिकान्धर्मान् व्याख्यास्यामः। धर्मज्ञसमयः प्रमाणं वेदाश्च। आप. ध. सू. I. 1. 1. 1–3; श्रुतिस्मृतिविहितो धर्मः। तदलाभे शिष्टाचारः प्रमाणम्। शिष्टः पुनरकामात्मा। अगृह्यमाणकारणो धर्मः। वसिष्ठ I. 4–7; श्रुतिः स्मृतिः सदाचारः स्वस्य च प्रियमात्मनः। सम्यक्सङ्कल्पजः कामः धर्ममूलमिदं स्मृतम्॥ या. I. 7; वेदोऽखिलो धर्ममूलं स्मृतिशीले च तद्विदाम्। आचारश्चैव साधूनामात्मनस्तुष्टिरेव च॥ मनु I. 6. हरदत्त explains mūla in Gaut. as pramāṇa and सामयाचारिकान् as 'पौरुषेयी व्यवस्था समयः स च त्रिविधः विधिर्नियमः प्रतिषेध इति। समयमूला आचाराः समयाचाराः तेषु भवाः सामयाचारिकाः एवंभूतान्धर्मानिति। कर्मजन्योऽभ्युदयनिःश्रेयसहेतुरपूर्वाख्य आत्मगुणो धर्मः.'. According to him सामयाचारिकान् means relating to practices based upon agreements or conventions. Manu distinguishes between śīla and ācāra. The first means, acc. to Kullūka and others, such moral qualities as 'devotion to learning, to gods and to parents' &c. mentioned in Hārita (quoted by Kullūka). All commentators connect 'svasya' in Manu II. 12 and Yāj. I. 7 with 'priyam', but Pandit Gaṭṭulal connects it with 'sadācāra' which means according to him 'sampradāya' (in Satsiddhāntamārtaṇḍa I. 5 p. 49, Nir. ed. 1942).

or secular) cause (or motive) can be assigned '.[1607] Manu II. 6 and Yāj. I. 7 declare that Veda (or śruti), smṛti and the practices of the good are the principal *sources* of dharma. The words employed in these works are *śīla, samaya, ācāra* or *sadācāra* or *śiṣṭācāra*[1607] (the latter three meaning the same thing). Āp. employs both words viz. *samaya* and *ācāra*, the first of which probably means ' agreement or convention or usage ', while the latter means ' custom '. The word ' custom ' now conveys the idea of some antiquity,[1608] while usage or convention does not necessarily convey that idea. A usage may be recent or it may be established by agreement among a certain class of persons (such as traders or craftsmen). We have to see what is meant when it is said that *ācāra* or *śiṣṭācāra* or *sadācāra* is the source (mūla) of dharma. An indication of the meaning is furnished by the word *pramāṇa* employed by Āp. and Vas. The meaning is that just as the revealed books (Veda) and the smṛtis authoritatively lay down what dharma is, so also in our quest to find out what dharma is in the varying circumstances of life the practices of those who may be called śiṣṭas furnish us with the necessary criterion or norm i. e. śiṣṭācāra is the touchstone for judging whether an act is in consonance with what the śāstras require us to do. The theory of the ancient writers was that the smṛtis were based on parts of Veda (that consists of *mantras* and Brāhmaṇa texts) which though formerly existent are not now extant or available, that similarly the practices of those who were learned in the Vedas and were deemed to be śiṣṭas must be inferred to have been based on portions of Veda not now available. This theory was advanced by such ancient

1607. As to the qualifications of śiṣṭas, vide H. of Dh. vol. II. pp. 971-72 where references are given to Baud. Dh. S., Manu, the Matsyapurāṇa and a few other works. The Tai. Up. I. 11 contains perhaps the oldest extant indication as to who should be regarded as śiṣṭas, though that word itself is not used. अथ यदि ते कर्मविचिकित्सा वा वृत्तविचिकित्सा वा स्यात् । ये तत्र ब्राह्मणाः संमर्शिनः युक्ता आयुक्ता अलूक्षा धर्मकामाः स्युः यथा ते तत्र वर्तेरन् तथा तत्र वर्तेथाः । अथाभ्याख्यातेषु । ये तत्र ब्राह्मणाः ... धर्मकामाः स्युः यथा ते तेषु वर्तेरन् तथा तेषु वर्तेथाः ।.

1608. Vide *Dalglish v. Guzuffer* 23 Cal. 427, 429 and *Sariatullah v. Pran Nath* 26 Cal. 184, 187 for the meaning of usage in modern enactments as distinguished from 'custom'. In *Juggomohun Ghose v. Manickchund* 7 Moo. I. A. 264 at p. 282 (mercantile) usage is sharply distinguished from custom in that the former need not possess the characteristics of antiquity, uniformity and notoriety that the latter must possess.

writers as Āp.[1609] and was taken up by many subsequent works. Manu II. 7 also states that whatever dharma has been ordained for any person by Manu, all that has been entirely declared in the Veda for the Veda is full of all knowledge. But it does not follow from this nor is it ever meant that all practices of śiṣṭas are authoritative in matters of dharma. The qualification was added that where the practices of śiṣṭas are clearly referable to or are prompted by a seen motive or by the desire to secure pleasure, there they are not authoritative. Manu (II. 18) restricted the word sadācāra to the customs handed down from generation to generation among the four varṇas and the mixed castes in the country called by him Brahmāvarta (II. 17). But many other writers did not so restrict it in this way.

We have to distinguish between what are called the sources (*mūla* or *pramāṇa*) of dharma and the *sthānas* of dharma (Yāj. I. 3 and 7).[1610] The former indicate to the inquiring spirit what dharma is (i. e. they are what are called *jñāpaka hetu*), while the latter must be studied as aids by the expounders of dharma in order to correctly grasp what dharma is, i. e. the different lores (other than Veda and smṛti) are not directly the sources of dharma, but are only mediately so. This distinction is an ancient one as even Gautama XI. 19 provides that the king is helped in his administration of justice by the Veda, the dharmaśāstras, the auxiliary lores (aṅgas), the Upavedas and the Purāṇa.[1611]

The position of the Pūrvamīmāṁsā in relation to the authoritativeness of smṛtis and customs requires careful and

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1609. आर्यसमयो ह्यगृह्यमानकारणः । ... ब्राह्मणोक्ता विधयस्तेषामुत्सन्नाः पाठाः प्रयोगादनुमीयन्ते । यत्र तु प्रीत्युपलब्धितः प्रवृत्तिर्न तत्र शास्त्रमस्ति । तदनुवर्तमानो नरकाय राध्यति । आप. ध. सू. I. 4. 12. 8, 10-13. The first sūtra may be used for explaining Vas. I. 4; गृह्यमाणकारण means 'that has a known or perceptible worldly motive such as covetousness'. Vide note 1653 below. Compare जै. I. 3. 7 अपि वा कारणाग्रहणे &c. quoted below.

1610. पुराणन्यायमीमांसाधर्मशास्त्राङ्गमिश्रिताः । वेदाः स्थानानि विद्यानां धर्मस्य च चतुर्दश ॥ या. I. 3, on which मिता. says, धर्मस्य च चतुर्दश स्थानानि हेतवः । एतानि च त्रैवर्णिकैरध्येतव्यानि, while मित्रमिश्र explains, 'विद्यानां पुरुषार्थसाधनज्ञानानाम् । अत एव धर्मस्यापि स्थानान्युपायाः विद्यायाः प्रवृत्तिद्वारा धर्मप्रयोजकत्वात्.' On I. 7 मित्रमिश्र says, पुराणादीनां स्वर्गादिकथाप्राधान्यादितिहासबहुलत्वेनार्थवादादिरूपतया न्यायमीमांसयोस्तर्कद्वारा शिक्षादीनामङ्गानां तत्तदुपकारसम्पादनेन वेदानुग्राहकतया धर्मे प्रामाण्यं न साक्षादिति न तान्यत्र गणितानि ।.

1611. तस्य च व्यवहारो वेदो धर्मशास्त्राण्यङ्गान्युपवेदाः पुराणम् । गौ. XI. 19.

detailed consideration. In I. 3. 1–2[1612] Jaimini considers the question whether such smṛti injunctions as 'one should perform the Aṣṭakā śrāddhas',[1613] or 'one should construct a tank or set up a *prapā* (place for free distribution of water to thirsty travellers'), or 'tufts of hair should be kept on the head' (at *caula* according to the gotra) are authoritative and establishes the conclusion that they are authoritative, since such smṛti injunctions equally with Vedic ones are addressed to the same persons (viz. the followers of the Veda) who have to act according to them. The idea is that those who perform the acts expressly enjoined by the Veda are also seen to perform the acts enjoined by such smṛtis as that of Manu and therefore the principal reason why these smṛtis are authoritative is the fact that those who know the Veda accept these smṛtis as authoritative and hold fast by them, as Medhātithi on Manu II. 6 says citing some verses from his own work called Smṛtiviveka.[1614] Śabara endeavours to show that there are indications (*liṅga*) in the Vedic texts pointing to the existence of what is prescribed in the smṛtis e. g. he cites the Vedic verse 'yām janāḥ' as indicative

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1612. 'धर्मस्य शब्दमूलत्वादशब्दमनपेक्षं स्यात् । अपि वा कर्तृसामान्यात्प्रमाणमनुमानं स्यात् । जै. I. 3. 1–2. The word अनुमान is here used in the sense of स्मृति. 'अपि वा पक्षो व्यावर्त्यते । प्रमाणं हि स्मृतिः ।... ग्रन्थस्त्वनुमीयेत कर्तृसामान्यात्स्मृतिवैदिकपदार्थयोः । तेनोपपन्नो वेदसंयोगस्त्रैवर्णिकानाम् ।' शबर; about अष्टका he says 'अष्टकालिङ्गाश्च मन्त्रा वेदे दृश्यन्ते यां जनाः प्रतिनन्दन्तीत्येवमादयः ।'. That verse is, यां जनाः प्रतिनन्दन्ति रात्रिं धेनुमिवायतीम् । संवत्सरस्य या पत्नी सा नो अस्तु सुमङ्गली ।. This occurs in आप. म. पा. II. 10. 27, in पारस्करगृह्य III. 2 and in अथर्ववेद III. 10. 2 where we have यां देवाः etc. Acc. to प्रभाकर the topic of Jai. I. 3. 1–2 is not such smṛti texts as those on Aṣṭakā, but the Vedic verse यां जनाः itself. The न्यायसुधा p. 126 adds 'अष्टकायै सुराधसे स्वाहेति तस्याष्टकादेवतारात्रिप्रकाशकत्वादेषा वै संवत्सरस्य पत्नी यदष्टकेति संवत्सरपत्नीत्वसंस्तुताष्टकाप्रकाशकत्वाच्चाष्टकालिङ्गत्वं स्पष्टमेवेति'. The word कर्तृसामान्यात् in the sūtra is explained in the मयूखमालिका as 'अग्निहोत्रादीनां वैदिकपदार्थानां ये कर्तारस्त एव अष्टकादिस्मृतीनामिति कर्तृसामान्यात्प्रामाण्यमुक्तम्' (on जै. I. 3. 4 p. 27); while the न्यायसुधा (p. 125) proposes also another explanation 'यद्वा स्मृतिकर्तृणां मन्वादीनां वैदिकपदार्थकर्तृणां तदानींतनानां शिष्टानां त्रैवर्णिकत्वेन समानत्वात् इदानींतनवन्मन्वादीनामप्युपपन्नो वेदसंयोग इत्यर्थः'.

1613. Vide Āśv. Gṛ. II. 4. 1 ff., Śān. Gṛ. III. 12–14, Pār. Gṛ. III. 3 for Aṣṭakā śrāddhas. Passages of the smṛtis about tanks and prapās are set out in H. of Dh. vol. II pp. 889–890. For tufts of hair kept in *caula* vide H. of Dh. vol. II. pp. 261 and 264,

1614. वैदिकैः स्मर्यमाणत्वात्तत्परिग्रहदार्ढ्यतः । संभाव्यवेदमूलत्वात्स्मृतीनां वेदमूलता ॥ quoted in the शास्त्रदीपिका on जै. I. 3. 2; 'स्मार्तवैदिकयोर्नित्यं व्यतिषङ्गात्परस्परम् । कर्तृतः कर्मतो वापि वियुज्येते न जातु तौ ।...प्रामाण्यकारणं मुख्यं वेदविद्भिः परिग्रहः । तद्रूपं कर्तृसामान्यादनुमानं श्रुतेः प्रति ॥ q. from स्मृतिविवेक by मेधा. on मनु. II. 6.

of aṣṭakās, Ṛg. X. 4. 1 of prapās, Ṛg. VI. 75. 17 of tufts of hair. The objection may be stated as follows:—The smṛtis are composed by human authors (i. e. they are *pauruṣeya*) and so have no independent authority in matters of dharma, as a man may say what is either false or mistaken. If it be said that the smṛtis really propound what is stated by the Veda, then they are practically superfluous and useless. and not being Veda they should be discarded (anapekṣa) To this the reply is that smṛtis are generally authoritative, as they must be held to be based on Veda because they are composed by men (like Manu) who were followers of the Veda, because what the smṛtis lay down has been consistently followed from generation to generation by the śiṣṭas and because it is possible to regard the Veda as their source. To the question why the Vedic passages on which the smṛti rules are postulated to have been based are not seen or found by us several answers were proposed by different writers. One view was that just as Vedic indications about locks of hair lead to the inference of śruti texts enjoining the keeping of tufts on the head, so the fact of the existence of such rules leads to the inference that śruti must have contained injunctions corresponding to all smṛti prescriptions. Kumārila raises objections to this view. Inference is based on perception (*pratyakṣa*) and invariable concomitance (*vyāpti*). There is no vyāpti between the smṛtis and śruti texts that are never found pronounced by any one, so no inference is possible and it would be like one blind man following another.[1615] Manu must have composed his smṛti on finding that ācāryas preceding him performed certain acts as based on Veda. These last must have believed that their predecessors also acted on the same belief. Hence there is what is called an 'andha-paramparā' on this hypothesis. And further this hypothesis of the inference of Śruti in all cases is opposed to perception, since as a matter of fact hundreds of Śruti passages are known that can be the basis of corresponding smṛti texts. Another view is (and Kumārila holds that it is somewhat better than the preceding view) that one should infer that the Vedic passages that were the basis of smṛtis are lost (utsanna or pralīna). Some support is lent to this by such Vedic texts as 'anantā vai vedāḥ' (Tai. Br. III 10.

1615. तस्मादयुक्तमन्धपरम्परान्यायादेव। या हि चोदना न कदाचिदुच्चार्यते तस्याः सर्वपुरुषप्रत्यक्षादिप्रसराभावाद् दुर्लभतरमस्तित्वम्। ... लिङ्गादीनां तु नित्यत्वान्नित्यमश्रूयमाणत्वे- ऽपि श्रुत्यनुमानकारणत्वमविरुद्धम्। तेन वरं प्रलीनश्रुत्यनुमानमेव। तन्त्रवार्तिक p. 164 on जै. I. 3. 2.

11) and by Āp. Dh. S. I. 4. 12. 10. Even this view is not acceptable to the Tantravārtika and most of the Mīmāṁsakas. The objection against the 2nd view is raised as follows. Even Bauddhas and other heretical sects[1616] would advance the argument that their works also are based on śruti texts that are now lost, and any one may regard anything as authoritative by pretending that the basic vedic texts are lost. Further the Mīmāṁsā view that the Veda is eternal (*nitya*) would be refuted if it were admitted that some portion of the Veda is lost. There is not much difference between the first view and the second view. Therefore Kumārila propounds the third view viz. that smṛtis are to be inferred as based on Vedic texts that are already in existence[1617]. If an objection is raised against this hypothesis that it must be explained why such Vedic texts (the bases of smṛtis) are not seen or found, the Tantravārtika replies in a famous *kārikā* that as the Vedic *śākhās* (the several branches of the Veda) are scattered about (in various countries), as men (followers of the Veda) are negligent and unmindful (i. e. they do not visit all the countries and so are unable to have a complete knowledge of all Vedic texts) and as several rules are declared in different contexts even when occurring in the same śākhā (and not at one place) it is not always possible to point out the Vedic sources of smṛti texts. If an objector were to ask : 'why were not the Vedic passages themselves (that are the sources of smṛti rules) embodied bodily into the smṛtis,' Kumārila replies that this was not done from the fear of the loss of the correct arrangement of the Vedic texts as traditionally handed down. The Veda is principally concerned

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1616. यदि तु प्रलीनशाखामूलता कल्प्येत ततः सर्वासां बुद्धादिस्मृतीनामपि तद्द्वारं प्रामाण्यं प्रसज्यते । यस्यैव च यदभिमतं स एव तत्प्रलीनशाखामस्तके निक्षिप्य प्रमाणीकुर्यात् । तन्त्रवार्तिक p. 163 ; नित्यानुमेयपक्षो यो वाच्यागमपरम्परा । तयोरन्धप्रवाहत्वं न भेदः कश्चिदीक्ष्यते । स्मृतिविवेक q. by मेधा. on मनु II. 6.

1617. यद्वा विद्यमानशाखागतश्रुतिमूलत्वमेवास्तु । कथमनुपलब्धिरिति चेदुच्यते । शाखानां विप्रकीर्णत्वात्पुरुषाणां प्रमादतः । नानाप्रकरणस्थत्वात्स्मृतेर्मूलं न दृश्यते ॥ यत्तु किमर्थं वेदवाक्यान्येव नोपसंगृहीतानीति । संप्रदायविनाशभीतेः । विशिष्टानुपूर्व्या हि स्वाध्यायोऽध्येतव्यः श्रूयते । स्मार्ताश्चाचाराः केचित् क्वचित्कस्यांचिच्छाखायाम् । तत्रापि तु केचित्पुरुषमेवाधिकृत्याम्नायन्ते । येन क्रतुप्रकरणाम्नाताः केनचिन्निमित्तेनाकृष्यमाणाः पुरुषधर्मतां भजन्ते । यथा—मलवद्वाससा सह न संवदेत्—तस्मान्न ब्राह्मणायावगुरेत्—इत्येवमादयः । तत्र यदि तावन्त्येव वाक्यान्युद्धृत्याध्यापयेयुस्ततः क्रमान्यत्वात्स्वाध्यायविधिविरोधः स्यात् । अनेन च निदर्शनेनान्येऽप्यर्थवादोद्धारेण विधिमात्रमधीयीरन् कर्मौपयिकमात्रं वा । तत्र वेदप्रलयः प्रसज्येत । तन्त्रवा. on जै. I. 3. 2. p. 164. For मलवद् &c. vide तै. सं. II. 5. 1. 5 and for तस्मान्न &c. तै. सं. II. 6. 10. 2 (q. in H. of Dh. vol. II p. 803 *n*. 1917 and p. 131 *n*. 346 respectively).

with sacrifices, though now and then there are rules addressed to men for regulating conduct only. People would only study the Vedic sentences contained in the smṛtis (that are concerned principally with conduct) where they would be arranged in a different order according to subjects and there would thus be loss of the arrangement of the Veda as originally delivered. Viśvarūpa[1618] (on Yāj. I. 7) quotes the above verse of Kumārila and states that there are thousands of smṛti rules that have their source in the Veda; he and Kumārila instance the rules against talking with (or coming in contact with) a woman in her monthly illness or the rule against assaulting a brāhmaṇa, or the rule about the sin of killing an ātreyī woman &c. Medhātithi on Manu II. 6 has an elaborate discussion on this very topic and quotes several verses from his own work called Smṛtiviveka[1619]. He does not approve of the first two views and follows Kumārila's view. Mīmāṁsā writers and commentators like Medhātithi say that Manu and other authors of smṛtis brought together for easy comprehension matters that are scattered about in the various Vedic texts, that are either not known to the students of the several śākhās or that cannot be brought together by men of ordinary or weak intellect.[1619a]

The general proposition that smṛtis are authoritative being established, a further question arises. What is to happen if a smṛti rule conflicts with the rule of the Veda? Jaimini deals

1618. स्मृतिमूला हि विधयः सन्ति वेदे सहस्रशः । संप्रदायविनाशात्तु भीतैः साक्षाद्धृतिः ॥ उत्कृष्टव्यस्तु स्पाशोयं मलवद्वाससा सह । न संवसेदिति विधिः स्मृतिमूलत्वसंमतः ॥ आत्रेय्या योषितैनस्वी भवेद् घातयितेत्यपि । वृत्तं तस्मादृनिन्द्यस्य नापक्रामेदितीति च ॥ अनारभ्य च सौवर्णं हिरण्यं भार्यमित्ययम् । रूपसंपत्तये चैवं भवितव्यं सुवाससा ॥ विश्वरूप on या. I. 7. pp. 14–15.

1619. शाखाः काश्चित्समुत्सन्नाः पक्षो नैष मतो मम । पक्षेऽस्मिन्नप्रमाणं हि बह्वदृष्टं प्रसज्यते । उपपन्नतरः पक्षो विक्षिप्तानां ततस्ततः । उत्पत्त्यादिसमाहारः प्रायशो दृश्यते ध्रुवः ॥ मेधा. on मनु. II. 6.

1619 a. अधीयन्त एव ताः शाखाः किन्तु विप्रकीर्णास्ते धर्माः कस्यांचिच्छाखायामष्टकादीनां कर्मणामुत्पत्तिः कस्यांचिद्द्रव्यं कचिद्देवता कचिन्मन्त्र इत्येवं विप्रकीर्णानां मन्वादयोऽङ्गोपसंहारं सुखावबोधार्थं चक्रुः । मेधा. on मनु. II. 6; उच्चार्यन्त एव स्मृतिमूलभूताः श्रुतयः संप्रत्यपि विप्रकीर्णाः काश्चित्काचित्कस्यांचिच्छाखायां विप्रकीर्णत्वाच्च शाखान्तराध्यायिभिः शाखान्तरगतानामनुपलम्भात् तादृश्यैनार्थवन्निबन्धनं तदुपलम्भेऽपि वा मन्दधीभिरनुपसंहरणीयानामुपसंहारफलं स्मृतिप्रणयनमिति न वैयर्थ्यमतः स्मृतयः प्रमाणमिति सिद्धम् । शास्त्रदीपिका.

with this question in I. 3. 3-4,[1620] which form a topic that states an exception to the general rule contained in Jai. I.3.1-2. Śabara gives three instances where there is apparently a conflict between the prescriptions of the śruti and those of smṛtis. The Veda says, 'the priest should chant (the *stotra*) after touching the *audumbarī* post', while smṛti says 'the whole of the audumbarī post should be covered with cloth'. The Veda says 'one to whom a son has been born and whose hair is still dark (and has not turned grey) should consecrate the Vedic fires', while smṛti says 'a man should observe Vedic studenthood for 48 years'[1621]; the Veda says 'when the Agnīṣomīya rite is finished then one may eat (the food prepared) in the house of the sacrificer', while smṛti says 'the food of one who has undergone dīkṣā for a sacrifice may be eaten after he purchases the soma plant'. In these cases the proposition enunciated by Jaimini is that 'in case of conflict (between an express śruti rule and a smṛti rule) the smṛti rule should be discarded, for when there is no conflict (with an express śruti) inference may be made (that a smṛti rule is based upon some Vedic text).' The examples may be explained as follows: The 'audumbarī' is a post of udumbara planted in the *sadas* in the performance of the Agniṣṭoma; the stotras (other than Bahiṣpavamāna) are chanted near the audumbarī post in the sadas. Vide H. of Dh. vol. II. p. 1155 for the fixing of the audumbara post in the *sadas* and p. 1185 for the chanting of stotras near the *audumbarī*. If the whole of the post be covered with cloth, it would not be possible to touch the post, but only the cloth would be touched. So there is contradiction. If a man is to consecrate Vedic fires when he has a son and his hair is dark, he must be between about 20 and 40 (i. e. a young man), but if a man were to observe brahmacarya for

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1620. विरोधे त्वनपेक्षं स्यादसति ह्यनुमानम् । हेतुदर्शनाच्च । जै. I. 3. 3-4; अथ यत्र श्रुतिविरोधस्तत्र कथम् । यथौदुम्बर्याः सर्ववेष्टनं 'औदुम्बरीं स्पृष्ट्वोद्गायेत्' इति श्रुत्या विरुद्धम् । अष्टाचत्वारिंशद्वर्षाणि वेदब्रह्मचर्यचरणं 'जातपुत्रः कृष्णकेशोऽग्नीनादधीत' इत्यनेन विरुद्धम् । क्रीतराजकोऽभोज्यान्न इति 'तस्मादग्नीषोमीये संस्थिते यजमानस्य गृहेऽशितव्यम्' इत्यनेन विरुद्धम् । तत्प्रमाणं कर्तृसामान्यात् । इत्येवं प्राप्ते ब्रूमः । अशक्यत्वादव्यामोह इत्यवगम्यते । ... तस्मादुक्तं श्रुतिविरुद्धा स्मृतिरप्रमाणमिति । अतश्च सर्ववेष्टनादि नादरणीयम् । शबर.

1621. For अष्टाचत्वारिं &c. vide बौ. ध. सू. I. 2. 1-5 अष्टाचत्वारिंशद्वर्षाणि पौराणं वेदब्रह्मचर्यम् । चतुर्विंशतिं द्वादश वा प्रतिवेदम् ... । ग्रहणान्तं वा जीवितस्यास्थिरत्वात् । कृष्णकेशोऽग्नीनादधीतेति श्रुतेः ।. For क्रीतराजको &c. vide आप. ध. सू. I. 6. 18. 16 and 23 'सत्रान्नमभोज्यम् । दीक्षितोऽक्रीतराजकः'. It may be noted that आप. mentions also several other views such as 'अग्नीषोमीयसंस्थायामेव । हुतायां वा वपायां दीक्षितस्य भोक्तव्यम्' (I. 6. 18. 24-25).

48 years, he would be about 52 to 56 years of age before he married (as the upanayana of a brāhmaṇa was to be performed generally in the 8th year or from the 5th year onwards at the most). Only a married man could consecrate Vedic fires. But a man's hair when he is fiftytwo years of age or more can hardly be all dark. Therefore there is contradiction between the rule derived from the Veda and that derived from smṛti. In the Jyotiṣṭoma (which generally occupied five days), the dīkṣā (purification and initiation of the sacrificer) takes place on the first day in the afternoon (vide H. of Dh. vol. II. pp. 1134–1136). Soma is purchased on the 2nd day of the Jyotiṣṭoma (*ibid.* 1140–4) and the animal is sacrificed for Agni and Soma on the 4th day (*ibid.* pp. 1158–59). According to śruti therefore the food prepared in the house of a dīkṣita may be eaten only after the 4th day, while smṛti says that it may be eaten after the purchase of *soma* on the 2nd day. In this way there is contradiction. Kumārila[1622] does not agree with Śabara as regards these examples in particular and as regards the general attitude towards smṛtis that are accepted by Vedic followers. He makes great efforts to explain how there is no real conflict in the cases cited by Śabara. As regards the cloth covering the *audumbarī* he says that it may cover the bottom and the upper portion of the post and leave a space of two or three finger-breadths in the middle uncovered (so that the audumbarī post can be touched in that particular portion), that (p. 188) there is a passage in the Śāṭyāyani

1622. The sūtra (Jai. I. 3. 3) is read as अनपेक्षं or अनपेक्ष्यं and with both readings it has been explained in different ways from ancient times. The तन्त्रवार्तिक says 'श्रौतस्मार्तविज्ञानविरोधे यदनपेक्षमपेक्षावर्जितं यस्य वाऽपेक्षणीयमन्यन्नास्तीति एवं पाठद्वयेपि पूर्वसूत्रात्प्रमाणशब्दमनुषङ्गेण सम्बध्य यदनपेक्षं तत्तावत् प्रमाणं स्यादिति' (p. 193); 'श्रुतिविरोधे यन्मानान्तरानपेक्षं श्रुतिवाक्यं तदेव प्रमाणं स्यान्न तु स्मृतिवाक्यं यस्मादसत्येव विरोधे स्मृतेः श्रुत्यनुमापकत्वम्' मयूखमालिका. On this interpretation the sūtra means 'in case of conflict between śruti and smṛti, the former which is independent is authoritative, for only when there is no conflict does an inference arise that smṛti is based on śruti'. The तन्त्रवार्तिक when it explains Jai. I. 3. 3–4 as referring to Bauddhas and the like takes 'anapekṣya' to mean 'deserving to be discarded'; 'तस्माद्धर्मं प्रति त्रयीबाह्यमेवंजातीयकं प्रामाण्येनानपेक्ष्यं स्यादिति सिद्धम्' p. 196. शङ्कर in his भाष्य on वेदान्तसूत्र II. 1. 1 appears to adopt Kumārila's 2nd interpretation of Jai. I. 3. 3. 'विप्रतिपत्तौ च स्मृतीनामवश्यकर्तव्येऽन्यतरपरिग्रहेऽन्यतरपरित्यागे च श्रुत्यनुसारिण्यः स्मृतयः प्रमाणमनपेक्ष्या इतराः। तदुक्तं प्रमाणलक्षणे विरोधे त्वन...तु मानामिति।' कुल्लूक on मनु II. 14 quotes जै. I. 3. 3 and explains 'श्रुतिविरोधे स्मृतिवाक्यमनपेक्ष्यमप्रमाणमनादरणीयम्। असति विरोधे मूलवेदानुमानमित्यर्थः'.

Brāhmaṇa which refers to the cloth covering the audumbarī (and so there may at most be an option), that as regards the taking of food in the house of a dīkṣita after the purchase of *soma* there is a śruti passage in the Atharvaveda (pp. 181 and 189) similar to the smṛti passage (and thus there is no conflict between śruti and smṛti, but between śruti and śruti, which would lead to an option) and further the smṛti rule may apply in the case of a man in distress (*āpad-dharma*), that smṛti does not prescribe an absolute period of 48 years for the study of Veda, but Baud. Dh. S. itself allows several alternative or optional periods and so no question of conflict with śruti arises. Kumārila's own position is this: In the case of apparent conflicts between śruti and smṛti, various methods of interpretation and reconciliation are possible. Each of the two may be given its proper scope as referring to different subject matters (which is called *viṣaya-vyavasthā*); it is also possible to hold that smṛti is based on some śruti texts already existing but not found at the time of discussion, but which may ultimately be found, in which case there will be an option, though the latter is to be avoided as far as possible as it is liable to eight faults (vide Tantravārtika pp. 174–175); or the two may be reconciled even when referring to the same subject matter e. g. a man may have dark hair even when he is 52 or more and the smṛti may be taken as meant to refer to such a man, while the śruti states the general rule about the age when consecration of Vedic fires was to be made. Therefore Kumārila holds that all that is meant by Jaimini and even by Śabara is that there is a great distinction between śruti and smṛti in that the former is *apauruṣeya* and an independent authority, while the latter has a human author (liable to err), is either actually based on the Veda or is inferred to be so based, that the two therefore can never be said to be quite alike each other as regards their authoritativeness and that lastly smṛti is not in itself to be regarded as unauthoritative[1623]. Kumārila therefore suggests that the proper subject of discussion in Jai. I. 3. 3–4 is the works of Bauddhas, Sāṅkhya, Yoga, Pañcarātra, Pāśupata and other heretical sects and the practices of *mlecchas*. These works contain some matters such as the emphasis on *ahiṁsā*, truthfulness, restraint of senses, charity and compassion, which are also emphasized in the Veda, but these works are not

1623. अतश्चैवं श्रुतिस्मृत्योर्विशेषोऽनेन दर्श्यते । नात्यन्तमेव बाध्यत्वं न चात्यन्त-तुल्यता । तन्त्रवार्तिक p. 194.

generally accepted by the followers of the Veda, are based on specious and false reasoning only (they are *haitukas* in the words of Manu), that they deny the authority of the Veda. Therefore Jaimini means that these works of heretic sects are not authoritative in matters of dharma as they are opposed to the Veda and should be discarded. For want of space it is not possible to set out in detail the interesting discussion in the Tantravārtika. The Jaiminīya-nyāya-mālāvistāra also gives another explanation of Jai. I. 3. 3.

Śabara (on Jai. I. 3. 4) explains that the three smṛti passages stated above are not authoritative since it is possible to point out how they originated in a visible worldly motive such as greed. When a visible motive can be pointed out for any smṛti text, it is not proper to infer that it is based on the Veda and has an unseen spiritual motive. Śabara[1624] postulates the reasons in the way of a modern man finding fault with priests. Some priests covered the whole of the Audumbarī post with cloth, because they coveted the cloth as part of the fee; others who desired a free meal when hungry took food at the house of a dīkṣita even after he had purchased the Soma plant; certain others in order to conceal their absence of virility went in for Veda study for 48 years. The Tantravārtika tries to show that in all these cases there is really no visible motive such as covetousness (pp. 188–189).

Śabara gives an alternative explanation of this sūtra (Jai. I. 3.4) and makes a separate topic (*adhikaraṇa*) of it. The reasons[1625] for giving an alternative explanation of a *sūtra* or *adhikaraṇa* are two, viz. dissatisfaction with the explanation already given or the wide scope of the subject under discussion. In I. 3. 3 passages from smṛtis were cited which were apparently in conflict with śruti. If they were really in conflict, that one reason alone is more than sufficient to render the smṛtis invalid. Therefore to say further that those smṛti passages originate in worldly motives like greed does not add any very substantial reason for the abandonment of smṛtis as authoritative. Therefore Śabara makes another adhikaraṇa of sūtra 4 of Jai. I. 3.

1624. हेतुदर्शनाच्च । जै. I. 3. 4; लोभाद्वास आदित्समाना औदुम्बरीं कृत्स्नां वेष्टितवन्तः केचित् । तत्स्मृतेर्बीजम् । बुभुक्षमाणाः केचित् क्रीतराजकस्य भोजनमाचरितवन्तः । अपुंस्त्वं प्रच्छादयन्तश्चाष्टाचत्वारिंशद्वर्षाणि वेदब्रह्मचर्यं चरितवन्तः । तत एषा स्मृति-रुपगम्यते । शबर.

1625. सर्वव्याख्याविकल्पानां द्वयमेव प्रयोजनम् । पूर्वत्रापरितोषो वा विषयव्याप्तिरेव वा ॥ तन्त्रवार्तिक p. 186.

He cites smṛti passages which are not opposed to Veda at all and says that such passages have seen a worldly motive such as convetousness and it is not proper to suppose that they are based on Veda and are therefore authoritative, when a visible purpose or motive can be ascribed to them. The result of the explanations of I. 3. 3–4 given by Śabara would be that smṛti rules that are opposed to śruti rules and smṛti prescriptions that can be shown to have a clear worldly motive are not authoritative or absolutely binding, while the rest of smṛti texts are authoritative.[1626]

Śabara cites on Jai. I. 3. 4 (when taken as a separate topic)[1626a] two examples; (1) the adhvaryu priest takes (as his fee) the cloth used in the Vaisarjana *homa*; (2) they perform the gift of the elephant (i. e. the cloth covering) of the sacrificial post. Śabara says that these passages are not opposed to any śruti text but instead of inferring a Vedic text as their basis it is far better to hold that there is a manifest worldly motive for these rules (viz. covetousness of the adhvaryu) and so these smṛti passages need not be looked upon as authoritative.[1627]

This discussion raises an important doctrine which frequently figures in dharmaśāstra works. The doctrine is expressed

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1626. न दृष्टे हेतौ हेत्वन्तरानुमानं क्रमते । दृष्टश्चात्र लोभ एव हेतुरिति । ... अतः श्रुतिविरुद्धं दृष्टकारणं च स्मरणमप्रमाणं ततोऽन्यत्प्रमाणमिति । शास्त्रदीपिका on जै. I. 3. 4.

1626a. अधिकरणान्तरं वा । वैसर्जनहोमीयं वासोऽध्वर्युर्गृह्णाति–इति, यूपहस्तिनो दानमाचरन्ति–इति । तत्कर्तृसामान्यात्प्रमाणमिति प्राप्ते । अप्रमाणं स्मृतिः । अत्रान्यन्मूलम् । लोभादाचरितवन्तः केचित्तत एषा स्मृतिः । उपपन्नतरं चैतत् वैदिकवचनकल्पनात् । शबर on जै. I. 3. 4. प्रभाकर in his बृहती refers to this example (on Jai. I. 1. 13 p. 285) 'दृष्टश्चायमर्थो यस्माद्धनं अर्जन उपजनिष्यन्त इति । यथा च सिद्धमागमवादिनामपि हेतुदर्शनादप्रामाण्यं यूपहस्तिनो दानमाचरन्तीत्येवमादिषु'.

1627. For the Vaisarjana *homa*, vide H. of Dh. II. p. 1158. In this a piece of fresh cloth is spread over the sacrificer (who touches the adhvaryu), the sacrificer's wife (who touches the yajamāna), the brother and sons of the sacrificer (who touch the wife). In the Vājapeya, the sacrificial post was 17 *aratnis* in height and 17 pieces of cloth were employed to prepare the appearance of a turban on the tip when enveloping the *yūpa* with a girdle. The figure presented by the cloth covering the yūpa was called यूपहस्तिन् (probably because it looked like the head and trunk of an elephant). 'वाजपेयादौ यूपपरिव्याणशाटकं यूपहस्तिशब्दार्थः' मयूखमालिका. 'यूपवेष्टनं सप्तदशभिर्वस्त्रैरुष्णीषग्रथनं वा परिव्ययणकाले' कात्या. श्रौ. 14. 1. 20 and the com. on Kāt. Śr. says 'रशनापरिव्ययणकाले सप्तदशभिर्वस्त्रैर्यूपस्य वेष्टनं कर्तव्यम् । अथवा उष्णीषग्रथनं विविधमूर्ध्वं ग्रथनं कर्तव्यं न तु वेष्टनमात्रम्'.

in this form viz. when a visible motive or purpose is obvious in the case of a rule or prescription it is not proper to ascribe an unseen or spiritual purpose or reason for it. This doctrine is older than even Āp. Dh. S. I. 4. 12. 11 which says, 'where men act because they find pleasure in so doing, there śāstra has no scope'. Śabara also says,[1628] 'those rules (in the smṛti) that have a seen purpose derive their authority from that fact, while those that have no visible purpose may be inferred to be based upon the Veda (and derive their authority from that).' These words of Śabara are quoted by Kullūka on Manu III. 7 where Manu states that a girl should not be selected as a bride from a family that neglects the *saṁskāras*, in which no male children are born, in which there is no Veda study, the members of which have on their bodies long and thick hair, that suffers from such diseases as piles, dyspepsia, epilepsy, black and white leprosy. Kullūka remarks that the works on medicine hold that such diseases are inherited and so if such a girl be married the progeny might suffer from these diseases, and thus this prohibition is based on a visible motive. From this a very important conclusion is drawn by dharmaśāstra writers viz. if one while performing a rite or when engaged in any matter acts contrary to a rule that has a seen purpose, the rite or matter does not become invalid or void, while where a rule is based on an unseen or spiritual purpose and it is infringed, the act itself becomes void or invalid. Yāj. I. 52 and 53[1629] prescribe among other things that the bride to be chosen by a man must be free from (incurable) diseases, must have a brother living, must not be a *sapiṇḍa* of the bridegroom or must not have the same *gotra* or *pravara* as that of the bridegroom. On this the Mit. remarks that if a man marries a girl who is suffering from an incurable disease, the marriage is valid, only he does an act which runs counter to seen results (i. e. he may suffer the consequence that

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1628. तथा प्रत्युपस्थितनियमानामाचाराणां दृष्टार्थत्वादेव प्रामाण्यम् । ... ... तेन ये दृष्टार्थास्ते तत एव प्रमाणम् । ये त्वदृष्टार्थास्तेषु वैदिकशब्दानुमानमिति । शबर on जै. I. 3. 2, quoted by कुल्लूक on मनु III. 7; अदृष्टं हि तत्र कल्पनीयं स्यात् तच्चाशक्यं दृष्टे सम्भवति । शबर on जै. IX. 3. 3; तत्र दृष्टं प्रयोजनमुत्सृज्य न शक्यमदृष्टं कल्पयितुम् । शबर on जै. X 2. 23. The न्यायसुधा on जै. I. 3. 4 p. 158 says, 'दृष्टे संभवत्यदृष्टकल्पनमयुक्तमिति न्यायस्य'; यत्र तु प्रीत्युपलब्धितः प्रवृत्तिर्न तत्र शास्त्रमस्ति । आप. ध. सू. I. 4. 12. 11.

1629. अविप्लुतब्रह्मचर्यो लक्षण्यां स्त्रियमुद्वहेत् । अनन्यपूर्विकां कान्तामसपिण्डां यवीयसीम् । अरोगिणीं भ्रातृमतीमसमानार्षगोत्रजाम् ॥ या. I. 52-53; सपिण्डासमानगोत्रासमानप्रवरासु भार्यात्वमेव नोत्पद्यते । रोगिण्यादिषु तु भार्यात्वे उत्पन्नेऽपि दृष्टविरोध एव । मिताक्षरा.

his children may be diseased), but if he goes through a ceremony of marriage with a girl who is a sapiṇḍa or of the same gotra or pravara there is no valid marriage and the girl is not his legal wife. No clear visible purpose can be associated with the prohibition against marrying a sapiṇḍa or sagotra girl; hence there must be a spiritual purpose in that prohibition and so if one infringes it the act itself (viz. marriage) becomes void.[1630]

The Tantravārtika of Kumārila has as usual a very long note on this discussion. He does not see eye to eye with Śabara. He says[1631] that the Mīmāṁsā is concerned with the investigation of dharma, that śruti is the prime authority in matters of dharma, that Mīmāṁsā has concern with smṛtis only so far as their authoritativeness in matters of dharma goes, that just as agriculture and the like are not discussed in Mīmāṁsā works because they have a purely secular purpose, so all acts that men do for a visible worldly purpose have no bearing on the investigation of dharma and that therefore the bhāṣyakāra (Śabara) was not quite right in saying that such practices as rising to receive an old man or a teacher have a visible purpose and are authoritative on that ground. He further remarks that visible and invisible or spiritual purposes are often inextricably mixed up. When the Veda prescribes 'he pounds the grains of paddy' or enjoins a sacrifice like the Kārīrī for bringing down rain, there is a visible purpose therein (e. g. the rice grains have to be freed from husk before boiled rice for oblations can be prepared). So even when an act has a seen purpose it may still have Veda as the basis; so also an act such as rising to show respect to a teacher may have a seen result (such as the teacher being pleased teaches the pupils with enthusiasm) as well as an unseen result (viz. completion of Veda study without obstacles). Therefore he argues that all

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1630. In a very recent case (*Madhavrao v. Raghavendrarao* 48 Bom. L. R. 196) the Bombay High Court has expressed doubts about the logic or reasonableness of this doctrine of the Pūrvamīmāṁsā in relation to marriages of sagotra parties.

1631. दृष्टार्थत्वादेव प्रामाण्यमिति। एतदयुक्तम्। धर्मं प्रति यतोऽत्रेदं प्रामाण्यं प्रस्तुतं स्मृतेः। तस्मात्कृष्यादिवत्तेषामुपन्यासो न युज्यते॥ न हि यावत्किंचिदाचरणं तस्य सर्वस्य मूलमिह प्रमाणीक्रियते। धर्मजिज्ञासाधिकारात्। यदि च गुर्वनुगमनादीनां केवलं दृष्टार्थत्वमेव स्यात्ततः कृष्यादिवद्धर्मे प्रत्यप्रामाण्यमेवेति नोपन्यसितव्याः। ... न चावघातादीनां वृष्टिकामयागादीनां च दृष्टार्थानामवैदिकत्वम्। तन्त्रवार्तिक pp. 165-166.

smṛtis[1632] are authoritative according to the purpose they serve, that whatever portion of the smṛtis is concerned with *dharma* and *mokṣa* (final release from saṁsāra) has its origin in the Veda and whatever is concerned with wealth and the satisfaction of desires (*artha* and *kāma*) is based on worldly practices. In this way are to be explained the didactic portions of the Mahābhārata and the Purāṇas, the episodes in these being useful as *arthavādas* (eulogies of what are prescribed as religious duties), the description of the several divisions of the earth being useful for indicating what countries are suitable for the performance of dharma and the enjoyment of its rewards and being based partly on Veda and partly on direct experience. Similarly the auxiliary lores (*aṅgas*) of the Veda (such as phonetics, grammar, metrics &c.) are partly based on the Veda and partly on worldly experience. Mīmāṁsā and Nyāya (logic) are necessary for the correct interpretation and understanding of the Veda (as stated by Manu in XII. 105–106). He is even prepared to concede that systems[1633] like the Sāṅkhya (which postulates a prime cause of the world called *Pradhāna*) or Vedānta (which postulates Puruṣa as the cause of the world), the theory of atoms (propounded by Kaṇāda) serve the purpose of explaining the creation and dissolution of the world, lead one to understand how the performance of sacrifices gives rise to the subtle *apūrva* which leads on to heaven and also exemplify how human effort and fate have their own spheres of operation (i. e. without human effort the world is produced and in spite of human effort it may be dissolved). Kumārila goes a step further and states that even the Buddhist philosophies of *vijñāna* (cognitions being the only reality), of the non-existence of the soul or of eternal flux arise from the arthavāda

1632. तेन सर्वस्मृतीनां प्रयोजनवती प्रामाण्यसिद्धिः । तत्र यावद्धर्ममोक्षसम्बन्धि तद्वेदप्रभवम् । यत्त्वर्थसुखविषयं तल्लोकव्यवहारपूर्वकमिति विवेक्तव्यम् । एषैवेतिहासपुराणयोरप्युपदेशवाक्यानां गतिः । उपाख्यानानि त्वर्थवादेषु व्याख्यातानि । ... मीमांसा तु लोकादेव प्रत्यक्षानुमानादिभिरविच्छिन्नसंप्रदायपण्डितव्यवहारैः प्रवृत्ता । न हि कश्चिदपि प्रथममेतावन्तं युक्तिकलापमुपसंहर्तुं क्षमः । एतेन न्यायविस्तरं व्याचक्षीत । तन्त्रवार्तिक pp. 166–167.

1633. याश्चैताः प्रधानपुरुषेश्वरपरमाणुकारणादिप्रक्रियाः सृष्टिप्रलयादिरूपेण प्रतीतास्ताः सर्वा मन्त्रार्थवादज्ञानादेव दृश्यमानसूक्ष्मस्थूलद्रव्यप्रकृतिविकारभावदर्शनेन च द्रष्टव्याः । प्रयोजनं च स्वर्गयागाद्युत्पाद्योत्पादकविभागज्ञानम् । सर्गप्रलयोपवर्णनमपि दैवपुरुषकारप्रभावविभागदर्शनार्थम् । ... विज्ञानमात्रक्षणभङ्गनैरात्म्यादिवादानामप्युपनिषदर्थवादप्रभवत्वं विषयेष्वात्यन्तिकं रागं निवर्तयितुमित्युपपन्नं सर्वेषां प्रामाण्यम् । सर्वत्र च यत्र कालान्तरफलत्वादिदानीमननुभवस्तत्र श्रुतिमूलता । तात्कालिकफले तु वृश्चिकविद्यादौ पुरुषान्तरे व्यवहारदर्शनादेव प्रामाण्यमिति विवेकसिद्धिः । तन्त्रवार्तिक p. 168.

passages of the Upaniṣads and serve the purpose of inducing men to give up extreme attachment to sensual pleasures, and therefore may be useful in their own way. He winds up by saying that in the case of all knowledge or works wherever the result (or reward) of the course laid down in them is to take place in the future and there is no possibility of experiencing its happening in the present such work may be deemed to be based on the Veda ; but where, as in the science of medicine, the result can be seen taking place in other people, that knowledge is authoritative only because of the visible result.

This discussion about smṛtis based on the Veda or on perceptible purposes or motives is taken up in the digests on dharmaśāstra. For example, Aparārka[1634] (pp. 626–627) quotes long passages from the Bhaviṣyapurāṇa dividing the contents of smṛtis into five categories and exemplifying that division, viz. (1) those based on a visible purpose or motive, (2) those based on unseen or spiritual motives or purposes, (3) those based on both visible purposes and unseen or spiritual purposes, (4) those based on reasoning, (5) those that merely re-iterate what is already well-known or determined. All these except the first variety are based according to the Bhaviṣyapurāṇa on the Veda. The examples of the five kinds given by the same Purāṇa are respectively as follows: (1) the smṛti (viz. Arthaśāstra or Daṇḍanīti) in which there is a discussion about six guṇas (*sandhi* &c.), the four upāyas (*sāma*, *dāna* &c.), the various superintendents of state departments (*adhyakṣa*) and of *kaṇṭakas*; (2) the prescription that one should perform the *sandhyā* worship or that one should not partake of dog's flesh ; (3) a *brahmacārin*

1634. तथा च भविष्यत्पुराणम् । दृष्टार्था च स्मृतिः काचिददृष्टार्था तथा परा । दृष्टादृष्टार्थरूपान्या न्यायमूला तथापरा । अनुवादस्मृतिस्त्वन्या शिष्टैर्दृष्टा तु पञ्चमी । सर्वा एता वेदमूला दृष्टार्थं(र्थाः ?) परिहृत्य तु ॥ षाड्गुण्यस्य यथायोगं प्रयोगात्कार्यगौरवात् । (प्रयोगः कार्य-?) । सामादीनामुपायानां योगो व्याससमासतः ॥ अध्यक्षाणां च निक्षेपः कण्टकानां निरूपणम् । दृष्टार्थेयं स्मृतिः प्रोक्ता ऋषिभिर्गरुडाग्रज ॥ सन्ध्योपास्तिः सदा कार्या शुनो मांसं न भक्षयेत् । अदृष्टार्था स्मृतिः प्रोक्ता ऋषिभिर्ज्ञानकोविदैः । पालाशं धारयेद्दण्ड-मुभयार्थं विदुर्बुधाः । विरोधे तु विकल्पः स्याज्जपहोमश्रुतौ यथा ॥ श्रुतौ दृष्टं यथा कार्यं स्मृतौ न सदृशं यदि । अनूक्तवादिनी सा तु पारिव्राज्यं यथा गृहात् ॥ अपरार्क pp. 626–627. मित्रमिश्र in his comment on या. I. 3 quotes the first two verses and in his परिभाषाप्रकाश p. 19 quotes all. कुल्लूक on मनु III. 7 quotes from the भविष्य॰ the half verse 'सर्वा ... दृष्टार्थाः परिहृत्य तु'. The स्मृतिच. II. p. 24 quotes from भविष्य॰ the two verses षाड्गुण्यस्य ... गरुडाग्रज and remarks 'दृष्टार्थाया स्मृतेरुदाहरणमेतत् । एवं च सन्धिविग्रहादि दृष्टार्थविषया स्मृतिरर्थशास्त्रमित्यर्थः ।'; should we not read 'स्मृतौ च सदृशं'?

should carry a staff of *palāśa* (the staff serves for one's protection, which is a seen purpose, but that it should be of palāśa and of no other tree is based on an unseen motive); (4) when one text declares that *homa* should be performed after sunrise and another declares that it should be performed before sunrise, reasoning requires that there should be an option (vide Manu II. 15); (5) when Manu declares (in VI. 38) that a brāhmaṇa should leave home to become a wandering ascetic he simply re-iterates what is laid down in such Vedic passages as Bṛ. Up. III. 5. 1 (vyutthāyātha bhikṣācaryam caranti) or Jābāla Up. 4.

In I. 3. 5-7 Jaimini as interpreted by Śabara[1635] deals with the topic of the authoritativeness of certain usages laid down in the smṛtis in relation to Vedic rites. Śabara states: *śiṣṭas* say that religious rites should be performed after sipping water (i. e. after *ācamana*), one should wear the sacred thread in the *upavīta* way in the worship of gods, one should do with the right hand all religious acts. The question is whether these acts should be done if not opposed to the śruti or should not be performed if opposed to what is taught in the Veda. The *pūrvapakṣa* view is that these acts should not be done because they run counter to the sequence of the acts laid down in the Veda. For example, the Veda says, 'after getting ready a bundle (or handful) of kuśa grass called *veda* one should prepare the *vedi* (altar)'. Here the preparation of the vedi is declared to follow immediately after the getting ready of a handful of kuśas. If after the handful is got ready a man has a sneeze he has according to Manu V. 145 and Vas. III. 38 to sip water before going on with the preparation of the *vedi*. This would be against the sequence (*krama*) of acts laid down in the Veda. Strangely enough Mr. K.L. Sarkar in T.L.L. (on Mīmāṁsā rules) translates the words 'vedam kṛtvā vedim karoti' as 'make the vedi and

1635. शिष्टाकोपेऽविरुद्धमिति चेत् । न शास्त्रपरिमाणत्वात् । अपि वा कारणाग्रहणे प्रयुक्तानि प्रतीयेरन् । जै. I. 3. 5-7 ; आचान्तेन कर्तव्यं यज्ञोपवीतिना कर्तव्यं दक्षिणाचारेण कर्तव्यमित्येवंलक्षणानि उदाहरणानि । किमेतानि श्रुतिविरुद्धानि न कर्तव्यानि उताविरुद्धानि कार्याणि चेत्पश्यसि तैरप्यनुष्ठीयमानैर्वैदिकं किंचिन्न कुप्यति तस्मादविरुद्धानीति । नैतदेवम् । शास्त्रपरिच्छिन्नं हि क्रमं बाधेरन् । कथम् वेदं कृत्वा वेदिं कुर्वीतेतीमां श्रुतिमुपरुन्ध्यादन्तरा वेदं वेदिं चानुष्ठीयमानमाचमनादि । शबर ; तेष्वदर्शनाद्विरोधस्येति वा समाप्तिः । ... अपि वा कारणं दृष्टं यस्मादेषु न गृह्यते । तस्मान्नाचमनादीनां क्रतुश्रुतिविरुद्धता ॥ तन्त्र. p. 198. कुमारिल says that the 7th sūtra should end with the words 'तेष्वदर्शनाद्विरोधस्य,' which may also be taken as part of the 8th sūtra and relies on the maxim of the crow's eye. The words प्रयुक्तानि प्रतीयेरन् mean 'शिष्टैरनुष्ठितानाचमनादीनाद्रियेरन्'.

then recite the vedas' (p. 241), thereby committing two mistakes He misunderstands the word 'veda' which in this passage only means a 'handful of kuśas' and inverts the sequence of the acts denoted by the gerundial termination 'tvā'. On account of these two mistakes the discussion on pp. 240-242 is misleading and obscure. If a man were to do the things required in a vedic rite with both hands, he would be able to do them quickly. The smṛti rule that every religious act should be done with the right hand alone interferes with the quick performance of religious acts. The established conclusion is that these religious acts (such as ācamana) are performed by the śiṣṭas, are prompted by no visible motive (such as covetousness) and are therefore to be looked upon as authoritative, being not opposed to śruti. Kumārila does not like this way of explaining the sūtras, since the instances given by Śabara really do not deserve to be put forth as even *prima facie* opposed to Śruti. The Tantravārtika (p. 201) sets out śruti passages wherein the wearing of the sacred thread in the *upavīta* form[1636] (Tai. S. II. 5. 11. 1 and Tai. Ār. II. 1), ācamana (Tai. Ā. II. 11), are enjoined. Therefore it explains the sūtras in a different way. It splits up Jai. I. 3. 5-7 into two adhikaraṇas. The first two constitute one topic. The pūrvapakṣa[1637] is: those precepts of Buddha and other founders of sects, such as the construction of monasteries and parks, the insistence on desirelessness, the practice of meditation, *ahiṁsā*, truthfulness, restraint of senses, charity and kindness, are such that they are also laid down by the Veda, are not opposed to the ideas of śiṣṭas or do not run counter to nor rouse those who know the Veda to anger and therefore they must be held to be authoritative. This is denied by saying that the Bauddha doctrines even on the abovesaid matters are not to

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1636. Vide H. of Dh. vol. II. pp. 287, 288, notes 671, 677 for the passages of Tai. S. and Tai. Ā.

1637. सूत्राणि तु पूर्वाधिकरणाक्षेपपरिहारसूत्रत्वेनैव व्याख्यातव्यानि । यत्तर्हि वेदविहितं न बाधते शिष्टान् वा वेदविदो न कोपयति विहारारामम्ण्डलकरणवैराग्य-ध्यानाभ्यासाहिंसा-सत्यवचन-दम-दान-दयादि तद्बुद्धादिभाषितं प्रमाणेनाविरुद्धमिति चेत् । न । शास्त्रपरिमाणत्वात् । परिमितान्येव हि चतुर्दशाष्टादश वा विद्यास्थानानि धर्मप्रमाणत्वेन शिष्टैः परिगृहीतानि वेदोपवेदाङ्गोपाङ्गाष्टादशधर्मसंहितापुराणशास्त्रशिक्षादण्डनीतिसंज्ञकानि, न च तेषां मध्ये बौद्धार्हतादिग्रन्थाः स्मृता गृहीता वा । ... तेन ... सन्मूलमप्यहिंसादि श्वदृतिनिक्षिप्तक्षीरवदनुपयोग्यविश्रम्भणीयं च तन्मात्रोपलब्धं भवतीत्यवश्यं यावत्परिगणितधर्मशास्त्रेभ्यो नोपलभ्यते तावदग्राह्यं भवति । तन्त्र॰ pp. 201-203; vide n. 1620 above.

be accepted as authoritative since only a limited[1638] number (14 or 18) of vidyās (the four vedas, the upavedas, the aṅgas of the veda, the 18 smṛtis, purāṇas, Daṇḍanīti) have been accepted by the vedic śiṣṭas as authoritative on matters of dharma and the works of the Bauddhas and Jainas are not included therein. Just as milk though originally pure becomes useless and unreliable when put into a bag of dog-skin, so the doctrines of Bauddhas such as ahiṁsā, though based on truth, are useless and are not authoritative in themselves for the followers of the Veda.

The Tantravārtika holds that Jai. 1. 3. 7 is an adhikaraṇa by itself and is concerned with the authoritativeness of *sadācāra* (the customs and usages of śiṣṭas). Its position is that those usages are authoritative that are not opposed to express Vedic texts, that are practised by Vedic śiṣṭas under the belief that they are right conduct (dharma) and for which no visible motive (such as pleasure or the satisfaction of desires or the acquisition of wealth) can be predicated. Śiṣṭas are those who perform the religious acts expressly enjoined by the Veda. They are not so called because they practise what is said to be sadācāra; otherwise there will be an argument in a circle (in the form 'sadācāra means what is practised by śiṣṭas and śiṣṭas are those who practise sadācāra'). The practices traditionally handed down from generation to generation which are observed by śiṣṭas (as stated above) with the idea that they constitute a part of dharma must be regarded as dharma and as leading to heaven.[1639] Practices do not become authoritative by the mere fact that no such motive or purpose can be postulated for them, but they become so only when they are observed by śiṣṭas as

1638. Vide Yāj. I. 3 for the 14 Vidyāsthānas. For the four upavedas which raise the number to 18 vide n. 17 p. 10 above. Acc. to the Nyāyasudhā (p. 183) Āyurveda, Dhanurveda, Gāndharvaveda and Arthaśāstra are four Upavedas; Mīmāṁsā and Nyāya (logic) are two upāṅgas, śikṣā (not the Vedāṅga on phonetics) is separately mentioned because there are works on phonetics like that of Kātyāyana laying down special rules for distinct śākhās. Daṇḍanīti is the same as Arthaśāstra.

1639. दृष्टकारणहीनानि यानि कर्माणि साधुभिः । प्रयुक्तानि प्रतीयेरन् धर्मत्वेनेह तान्यपि ॥ शरीरस्थितये यानि सुखार्थं वा प्रयुञ्जते । अर्थार्थं वा न तेष्वस्ति शिष्टानामेव धर्मधीः ॥ धर्मत्वेन प्रपन्नानि शिष्टैर्यानि तु कानिचित् । वैदिकैः कर्तृसामान्यात्तेषां धर्मत्वमिष्यते ॥ ... नैव तेषां सदाचारनिमित्ता शिष्टता मता । साक्षाद्विहितकारित्वाच्छिष्टत्वे सति तद्ग्रहः ॥ प्रत्यक्षवेदविहितधर्मक्रियया हि लब्धशिष्टत्वव्यपदेशा यत्परम्परागतमन्यदपि धर्मबुद्ध्या कुर्वन्ति तदपि स्वर्ग्यत्वाद्धर्मरूपमेव । तन्त्रवार्तिक pp. 205-6.

part of dharma. The Tantravārtika (p. 205) gives certain illustrations of such practices viz gifts, *japa*, mātṛyajña (offerings to the mother Goddesses), the festival of Indra's banner, fairs held at temples, fasts by maidens on the 4th day of a month, gifts of lamps on the first day of Kārtika, the spring[1640] festival on the first day of the dark half of Phālguna &c. The Tantravārtika is careful to point out that many activities such as agriculture, menial service or trade that are the means of securing wealth and pleasures and that give rise to several fixed and varying acts and also such actions as eating sumptuous food, drinking, sleeping on soft beds, possessing a charming house and garden, engaging in painting, singing and dancing, enjoying the fragrance of sandalwood and flowers, all of which are common to *mlecchas* and *Āryas*, are not deemed by any one to be part of dharma and that it does not follow that, because a few actions (of śiṣṭas) are accepted as dharma, all their actions are to be looked upon as dharma.[1641] In ordinary life certain practices only are deemed to be śiṣṭācāra, while there are certain other acts that are common to all human beings (including śiṣṭas), but are not so regarded. Certain practices such as worship of gods and honouring brāhmaṇas are seen to be common among all people and yet do constitute dharma, because that is deemed to be so by the śiṣṭas. Those practices alone are dharma that are observed by śiṣṭas only as obligatory on them and not other practices that are common to all beings. The Trantravārtika then refers to the Dharma-

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1640. For the festival called Indramaha, vide H. of Dh. vol. II. pp. 825–826. The spring festival was one in which on the first day of the dark half of Phālguna people went about drenching each other in ordinary or coloured water discharged from syringes and the like: 'फाल्गुनकृष्णप्रतिपदि क्रियमाणः परस्परजलसेकः वसन्तोत्सवः' मयूखमालिका on शास्त्रदीपिका on जै. I. 3. 7. Modern practice combines this with the lighting of bonfires on the Full moon of Phālguna. The mythical origin of होलिका of modern days on the Full moon day of Phālguna is described in भविष्यपुराण (उत्तरपर्व chap. 132).

1641. यानि तु म्लेच्छादिसमानानि नियतानियतक्रियान्तराण्यर्थसुखसाधनकृषिसेवा-वाणिज्यादीनि मृष्टाशपानमृदुशयनासनरमणीयगृहोद्यानालेख्यगीतनृत्यगन्धपुष्पादिकर्माणि प्रसिद्धानि तेषु नैव कस्यचिद्धर्मत्वाशङ्कास्तीति न तत्सामान्यतो दृष्टेनेतरनिराक्रियोपपत्तिः केषांचिद्धि धर्मत्वाभ्युपगमान्न सर्वेषामेव तत्प्रसङ्गः । किं तु–देवब्राह्मणपूजादि यत्तेषामपि किंचन । तत्रेष्टमेव धर्मत्वं शिष्टाचारमतं हि तत् ॥ लोके हि कश्चिदाचारः शिष्टत्वेन विशिष्यते । कश्चित्तु प्राणिसामान्यमात्रस्तैरपि सङ्गतः ॥ तत्र यः कार्यरूपेण शिष्टानेवानुवर्तते । स एव केवलो धर्मो नेतरः प्राणिमात्रगः ॥ तन्त्र. p. 206; यो हि सदाचारः पुण्यबुद्ध्या क्रियते स धर्मत्वं प्रतिपद्यते । यस्तु कामक्रोधलोभमोहशोकादिहेतुत्वेनोपलभ्यते स यथाविधिप्रतिषेधं वर्तिष्यते । तन्त्रवार्तिक p. 208.

sūtra[1642] of Gaut. (I. 3) and Āp. Dh. S. (II. 6. 13. 7–8) which say that ancient (or great) men in several instances were guilty of transgressions of dharma and of committing desperate acts, that on account of their spiritual merit they did not incur sin, but if a man of later days were to follow them in the same acts he would sink into hell. It then gives twelve instances of lapses from good conduct (attributed even to *avatārs*) that were transgressions and either explains them away or says that they were due to wrath, hatred or other passions, were not intended by the authors (of those acts) themselves to be dharma and are not to be looked upon as śiṣṭācāra by modern men. The instances are: (1) Prajāpati who is said to have approached Uṣas, his daughter (Śat. Br. I. 7. 4. 1 or Ait. Br. 13. 9); (2) Indra, who is described as the paramour of Ahalyā (in the Subrahmaṇyā litany); (3) Nahuṣa, who occupied the position of Indra, made approaches to Śacī, the wife of Indra (Udyoga, chap. 13 ff) and was transformed into an *ajagara* (Boa Constrictor) ; (4) Vasiṣṭha, who when his 100 sons were devoured by a demon, was so struck with grief that he threw himself bound into the Vipāśā river(Nirukta IX. 26, Ādiparva chap. 177. 1–6 = cr. ed. 167. 1–6, Vanaparva 130. 8–9, Anuśāsana 3. 12–13); (5) Purūravas who thought of dying by hanging or by being devoured by wolves (Ṛg. X. 95. 14, Śat. Br. XI. 5. 1–8) when separated from Urvaśī ; (6) Viśvāmitra, who officiated as priest at the sacrifice of Triśaṅku that had become a cāṇḍāla through a curse (Ādiparva 71. 31–33); (7) Yudhiṣṭhira who took Draupadī as wife although she had been won by his younger brother Arjuna by his skill in archery and who prevaricated in order to bring about the death of his brāhmaṇa teacher Droṇa (Droṇaparva 190. 55); (8) Kṛṣṇa Dvaipāyana (Vyāsa), who thought himself a perpetual student, procreated by *niyoga* at the request of his mother Satyavatī two sons on the widows of his brother Vicitravīrya ; (9) Bhīṣma who lived on without belonging to any (of the four) āśramas and who is said to have performed several Aśvamedhas though he had no wife ; (10)

1642. दृष्टो धर्मव्यतिक्रमः साहसं च महताम् । अवरदौर्बल्यात् । गौ. I. 3–4 ; दृष्टो ... साहसं च पूर्वेषाम् । तेषां तेजोविशेषेण प्रत्यवायो न विद्यते । तदन्वीक्ष्य प्रयुञ्जानः सीदत्यवरः । आप. ध. सू. II. 6. 13. 7–9 ; भागवतपुराण X. (पूर्वार्ध 33. 30) has a verse to the same effect.

Rāma who performed Aśvamedha accompanied by a golden image of Sītā; (11) Dhṛtarāṣṭra, though blind, performed sacrifices; (12) Vāsudeva and Arjuna are described as being drunk and as having married Rukmiṇī and Subhadrā respectively who were their maternal uncle's daughters (such marriages being forbidden). Kumārila, like a modern comparative mythologist, explains (Tantravārtika p. 208) that Prajāpati means 'the Sun' who approaches (i. e. rises after) the Dawn. This explanation is as old as the Ait. Br. 13. 9 where it is said that there are two views viz. it is either 'Heaven' or 'Uṣas' that is meant by the word 'daughter.' Similarly Indra and Ahalyā respectively mean the Sun and the Night and *jāra* means literally 'one who makes to disappear or wither away' (and not paramour) in that passage. Vide H. of Dh. vol. II. p. 1145 note 2550 for the epithet 'Ahalyāyai jāra' in the Veda and quotation from Tantravārtika. The story of Ahalyā and Indra varies in its details in the epics. Vide Rāmāyaṇa I. 48, Udyoga 12. 6. These two are instances of transgression of dharma (dharma-vyatikrama) and the next case of Vasiṣṭha is an example of *sāhasa* (through sorrow). Kumārila says that Viśvāmitra was prompted by his hatred of Vasiṣṭha and his pride, that the sin accruing from his act would be neutralized by his great austerities. So his actions cannot serve as a model for imitation by others. Vyāsa, who was a son of Satyavatī from Parāśara when she was a maiden, had Vicitravīrya as (his uterine) brother after Satyavatī married Śantanu. In the case of a brahmacārin, sexual intercourse is most reprehensible (vide H. of Dh. vol. II. p. 374). But Vyāsa agreed to *niyoga* because of his regard for his mother as allowed by Gaut. 18. 4–5. Kumārila adds that Vyāsa could do so on account of his great past and future austerities, that another person with similar qualifications may do so even in spite of all prohibitions, since the Mahābhārata (Āśramavāsika 30. 24) says 'sarvam balavatāṁ pathyaṁ' (to the strong everything is wholesome or allowable). He gives an apt illustration. An elephant can devour branches of trees without harm, but others doing so would meet death. Dakṣa V.10 prescribes 'anāśrami na tiṣṭheta kṣaṇamekamapi dvijaḥ' (a twice-born person should not stay even for a moment unattached to some āśrama). Bhīṣma remained unmarried out of filial devotion to his father and Rāma could not think of another wife as he was so much attached to Sītā. Kumārila boldly asserts that Bhīṣma had a wife only for the purpose of the sacrifices he performed (though this is mentioned in no Itihāsa or Purāṇa) and relies upon the

mode of proof called *arthāpatti* for this[1643]. His words are given below. This and some other explanations offered by Kumārila shed a very interesting light on the theological apologetics of Mīmāṁsakas. Vide H. of Dh. vol. II. pp. 558 and 684 for Rāma and the golden image of Sītā. As to Yudhiṣṭhira's bringing about the death of his brāhmaṇa teacher the explanation is that the former performed Aśvamedha after the end of the war by way of prāyaścitta (vide H. of Dh. vol. II. p. 147 n. 333 and pp. 1236–37 notes 2674–75 for Aśvamedha as the re mover of all sins). As to Draupadī being the wife of five brothers Kumārila quotes Ādiparva 198. 14 (=cr. ed. 190. 14) and offers several explanations (p. 209), the most astounding being that there were five wives of the five brothers who were so similar that they were all referred to as one. As the Nyāyasudhā (p. 194) remarks, these various explanations were offered to show off great resourcefulness of interpretation (parihāra-vaibhavārtham), the proper one being that the practice of the Pāṇḍavas was an evil one and was not to be imitated. A blind man could not perform sacrifices and was excluded from inheritance. Vide H. of Dh. vol. II. p. 157 n. 369 and vol. III. p. 609 n. 1154. But Kumārila says that as Dhṛtarāṣṭra was blessed with sight for a while and saw his deceased sons through the miraculous power of Vyāsa (Āśramavāsiparva chap. 32–37) he might have been endowed with sight at the time of the sacrifices or what is meant is that he made gifts which are spoken of as sacrifices. As regards Subhadrā, Kumārila asserts that in spite of the fact that Subhadrā was said in the Ādiparva (219. 18 = cr. ed. 211. 18) to have been the *daughter* of Vasudeva and *sister* of Kṛṣṇa, she was really the daughter of Kṛṣṇa's step-mother's sister or the daughter's daughter of the sister of his step-mother's father (a female cousin being often called a sister among the Lāṭas). Vide H. of Dh. vol. II. pp. 459–460 and notes to my edition of the text of V. Mayūkha (pp. 200–202). Kṛṣṇa's marriage with Rukmiṇī is to be similarly explained. It is somewhat surpris-

1643. लोभाद्यभिभवात्सन्निहितानर्थादर्शनेनाधर्माचरणं धर्मव्यतिक्रमः । दृष्टस्याप्यनर्थस्य बलदर्पेणानादराद्धर्माचरणं साहसम् । न्यायसुधा p. 185 ; भ्रातॄणामेक ... मनुरब्रवीत् (मनु ९. १८२) — इत्येवं विचित्रवीर्यक्षेत्रजपुत्रलब्धपितृऋणत्वः केवलयज्ञार्थपत्नीसम्बन्ध आसीदित्यर्थापत्त्यानुक्तमपि गम्यते । यो वा पिण्डं पितुः पाणौ विज्ञातेपि न दत्तवान् । शास्त्रार्थातिक्रमाद्भीतो यजेतैकाक्ष्यसौ कथम् ॥ तन्त्र. p. 208 ; अथवा बह्व्य एव ताः सदृशरूपा द्रौपद्य एकत्वेनोपचरिता इति व्यवहारार्थापत्त्या गम्यते । तन्त्र. p. 209 ; एवमर्जुनस्य मातुलकन्यायाः सुभद्रायाः परिणयेपि सुभद्राया वसुदेवकन्यात्वस्य साक्षात् क्वचिदश्रवणात् । मीमांसाको. p. 48 ; but in the Ādiparva 219. 18 Subhadrā is expressly stated to be the *daughter* of Vasudeva ' दुहिता वसुदेवस्य वासुदेवस्य च स्वसा '.

ing that Khaṇḍadeva states that it is nowhere found that Subhadrā was the daughter of Vasudeva. Probably he had a corrupt reading of the Mahābhārata passage before him. As to the charge of drinking spirituous liquor (*ubhau madhvāsavakṣībau* in Udyogaparva 59. 5) against both Vāsudeva and Arjuna, they were both kṣatriyas and only brāhmaṇas were prohibited from drinking any kind of intoxicating drink (Gaut. II. 25), while to kṣatriyas and vaiśyas two kinds of wine called madhu (liquor from honey or madhuka flowers) and sīdhu (rum) were allowed and only paiṣṭī (spirituous liquor distilled from flour) was forbidden (by Gaut. II. 25, Manu XI. 93-94).

Kumārila offers some other explanations of Jai.[1644] I. 3. 5-7 which need not be set out here.

Kumārila mentions certain practices of his times and concludes that they are to be condemned and not to be followed or regarded as authoritative. He says:[1645] even in these days brāhmaṇa women of Ahicchatra and Mathurā drink wine; northerners (northern brāhmaṇas) engage in such transactions as the gift and sale of horses and mules that have a mane, asses,

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1644. जै. I. 3. 7. will have to be read as 'अपि वा कारणाग्रहणे प्रयुक्तानि प्रतीयेरन् तेष्वदर्शनाद्विरोधस्य' acc. to Kumārila, Khaṇḍadeva and others if Śabara's interpretation of the sūtra is to be accepted. 'तेषु आचमनादिषु क्रमादिविरोधस्यादर्शनाद्वैदिककर्मणां तत्स्वरूपप्रामाण्यकारणस्याग्रहणे शिष्टैः प्रयुक्तानि आचमनादीनि प्रमाणत्वेन प्रतीयेरन्निति सूत्रार्थः । एवं भाष्यकारेणाधिकरणार्थ उपवर्णितः ।' मीमांसाकौस्तुभ on I. 3. 7 p. 36. Kumārila implies a pūrvapakṣa and holds that I. 3. 7 is the sūtra giving the final conclusion only and as an independent adhikaraṇa by itself.

1645. अद्यत्वेऽप्यहिच्छत्रमथुरानिवासिब्राह्मणीनां सुरापानम् । केसरवडवाश्वतरखरोष्ट्रोभयतोदद्दानप्रतिग्रहविक्रयव्यवहारभार्यापत्यमित्रसहभोजनाद्युदीच्यानाम् । मातुलसुताविवाहासन्दीस्थभोजनादीनि दाक्षिणात्यानाम् । मित्रस्वजनोच्छिष्टस्पृष्टभोजनं सर्ववर्णपरस्परस्पृष्टताम्बूलादनतद्वसानानाचमन—निर्णेजकधौतगर्दभारूढवस्त्रपरिधान–ब्रह्महत्यातिरिक्तमहापातककार्यपरिहरणादीन्युभयेषाम् । अतिस्थूलानि प्रतिपुरुषजातिकुलावस्थितसूक्ष्मस्वधर्मव्यतिक्रमणानि त्वनन्तभेदानि सर्वविगानहेतुदर्शनानि च प्रायेणैव संभवन्तीति नैवंजातीयकमिश्रसदाचारधर्मत्वाध्यवसानसंभवः । तन्त्र. p. 204. अहिच्छत्र is modern Ramnagar in Kohilkhand. Vide JRAS. for 1903 p. 292. The form अधिच्छत्रा occurs in a Pabhosa Inscription (E. I. vol. II. at p. 243). For the different views about मातुलसुतापरिणयन vide H. of Dh. vol. II. pp. 458-463. Kullūka on Manu XI. 95 notes that certain commentators held that the prohibition against drinking in the case of brāhmaṇas did not apply to brāhmaṇa women. Vide H. of Dh. vol. II. p. 765 for सहभोजन with wife and children and pp. 181 and 839 about gift and sale of horses and animals with two rows of teeth, where Tai. S. II. 2. 6. 3 and II. 3. 12. 1. and Jai. III. 4. 28-31 are cited.

camels and animals with two rows of teeth and eat from the same plate with their wives, children and friends; brāhmaṇas of the south enter into matrimony with the maternal uncle's daughter and take their meals while seated on a couch (of wicker work); both (brāhmaṇas of the north and south) take cooked food (kept in pots) that remains after their friends or relatives have partaken of it or that has been touched by them (at the time of eating); they chew betelnut leaves that have been touched by persons of all varṇas, do not perform sipping of water (*ācamana*) at the end of the chewing of betelnut, wear clothes washed by washermen and brought on the back of asses; they do not avoid contact even with persons guilty of grave sins (except of brāhmaṇa murder). There are everywhere an infinite number of very obvious transgressions of the subtle dictates of dharma laid down for each man, caste or family, that (transgressions) are contrary to śruti, smṛti and each other and that have a visible purpose behind them. It is not possible to regard such practices as authoritative.' Similarly Varadarāja, (1600–1660 A. D.) a pupil of Bhaṭṭojī Dīkṣita, in his work styled the Gīrvāṇapadamañjarī in a dialogue between a Kānyakubja brāhmaṇa and a *sannyāsin* hailing from Vijayanagara makes the brāhmaṇa host say that each country has certain practices which are *durācāras* such as marrying a maternal uncle's daughter in the south, marriage of girls among southerners even before they are four years old, sitting down to a meal without bathing in Karṇāṭaka, in Mahārāṣṭra the marriage of a younger brother before an elder one, in the hilly country the practice of *niyoga* (*vide* Mr. P. K. Gode's interesting paper in ' Bhāratīyā-vidyā ' vol. VI pp. 27–30).

According to Śabara, Jaimini in I. 3. 8–9 deals with certain words like *yava*, *varāha* and *vetasa*, that have different significances among Āryas and Mlecchas (and therefore these sūtras constitute what is called yavavarāhādhikaraṇa). But Kumārila does not like this view of Śabara and proposes another topic for these two sūtras, viz. the relative strength of smṛti and sadācāra where they are in conflict. Here there are three[1646] possible

1646. तेनाचारबलीयस्त्वं समत्वं नेह युज्यते। स्मृतीनां वा बलीयस्त्वं शास्त्रस्था नेति वर्ण्यते॥ उभयोः श्रुतिमूलत्वं न स्मृत्याचारयोः समम्। समस्यप्रणीता हि स्मृतिः सोपनिबन्धना॥ तथा श्रुत्यनुमानं हि निर्विघ्नमुपजायते। आचारात्तु स्मृतिं ज्ञात्वा श्रुतिर्विज्ञायते ततः॥ तेन द्व्यन्तरितं तस्य प्रामाण्यं विप्रकृष्यते। ... ... तेनाचारः स्मृतिं यावदनुमातुं प्रवर्तते। स्मृतिर्लब्धश्रुतिस्तावद्धर्ममेवावधारयेत्॥ तस्मादाचारेभ्यः स्मृतिर्बलीयसी सनिबन्धनेति। तन्त्र. pp. 220–221.

views, viz. that both are equally strong and so there is an option in case of conflict, that ācāra is stronger, that smṛti is the stronger of the two. The prima facie view is that both are equally strong, since smṛti and sadācāra are both inferred to be based upon Veda. Kumārila's own final conclusion is that smṛti is of greater force than ācāra, that is, where they come in direct conflict smṛti should prevail. His position is that, though both smṛti and ācāra are to be deemed to be based on Veda, there is a difference between the two. People have full faith in such smṛtis as that of Manu and Manu and others are believed to have been inspired sages and are the propounders of the rules of dharma scattered about in various Vedic śākhās, while the same cannot be said about modern men and their practices cannot claim or possess the same weight and allegiance that the practices laid down by Manu and other sages can. From the practice of śiṣṭas one may infer a smṛti as the root thereof and then further one may infer a śruti as the root of the smṛti. Therefore ācāra is removed by two stages from the Veda, while smṛti is removed only by one stage from the Veda. Hence Kumārila says that in case of conflict smṛti should prevail over ācāra. The practices that are discussed here (acc. to Kumārila, Pārthasārathi and others) are such as the marriage with a maternal uncle's daughter or with a paternal aunt's daughter and the like that are in vogue among certain people and that are yet opposed to smṛtis (such as Manu XI. 171-72) and for which a visible motive can easily be found (*kāmādihetvantaraṁ spaṣṭameva dṛśyate*, as the Śāstradīpikā says).

Kumārila gives another (and so a third) explanation of Jai. I. 3. 8-9 [1647] which need not detain us here.

1647. समा विप्रतिपत्तिः स्यात् । शास्त्रस्था वा तन्निमित्तत्वात् । जै. I. 3. 8-9. Acc. to कुमारिल here शास्त्र means स्मृति, while acc. to Sabara's gloss शास्त्रस्थाः means शिष्टाः. Sir G. Jha in 'Pūrvamīmāṁsā in its sources' p. 226 translates 'giving and accepting in gift and buying and selling lions, horses'. केसरिन् means 'a lion' also, but it is hardly possible to believe that gifts of lions were made to brāhmaṇas or that they accepted them. केसरि must be taken as an adjective of 'aśva' here. The शास्त्रदीपिका on III. 4. 34 remarks, तेन यत्र दोषवत्त्वबोधिः । लौकिके चाश्वदाने न केसरिणो दद्यादिति प्रतिषेधाद् दोषोऽस्ति वैदिके तु कर्माङ्गदाने विशेषविधानात्प्रतिषेधाप्रवृत्तेर्नास्ति दोषः. This shows that the prohibition against the gift of 'kesarin' refers to the gift of horses. Śabara on Jai. VI. 7. 4 makes this quite clear when he says that in the Viśvajit where the sacrificer had to make a gift of all his wealth, horses

(*Continued on the next page*)

Jai. I. 3. 15–23 constitute what is called Holākādhikaraṇa, or Sāmānyaśrutikalpanādhikaraṇa. The first two and the last two sūtras are the most important. Certain practices[1648] like the Holākā (spring) festival are observed by the easterners, certain others like Āhnīnaibuka (worship of growing Karañja or Arka or other trees as handed down in one's family) by the southerners, and the Udvṛṣabhayajña (honouring oxen on the Full Moon of Jyeṣṭha and making them run a race) by the northerners. The question is: whether, in making an inference about these practices being based on Veda, one was to suppose that the inferred Vedic text also should be restricted to the easterners and the like[1649]. The pūrvapakṣa view is that the śruti to be inferred as the basis of the respective practices must be deemed to be restricted to certain persons only (such as the easterners i. e. *prācyas* &c.). The established conclusion is that

(*Continued from the last page*)

should not be gifted on account of the prohibition contained in 'he does not give *kesarin*': एष हि विशेषोऽश्वानामन्येभ्यो द्रव्येभ्यो यदेषां दानं प्रतिषिध्यते न केसरिणो ददाति नोभयतोदतः प्रतिगृह्णातीति विश्वजित्येव समाम्नायते. The मीमांसाकौ. (pp. 60–61) explains the सूत्रs: 'अथवाचार एव बलवान् ... तदनङ्गीकरणे तु परं समा विप्रतिपत्तिः भवेत् न तु स्मृतिप्राबल्यमिति सूत्रार्थः । सिद्धान्तस्तु स्मृतिशास्त्रस्यैव प्रतिपत्तिर्बलीयसी ।'; on तन्निमित्तत्वात् the न्यायसुधा observes 'तन्निमित्तत्वादिति शास्त्रत्वसामान्येन प्रकृतत्वाद् वेदाख्यं शास्त्रं तच्छब्देन परामृश्य श्रुतिमूलत्वं हेतुरुच्यते तच्चोभयोः स्मृत्याधिकरणे प्राप्तं विरोधे पुनरुच्यमानमाचाराणां श्रुतिमूलत्वपरिसंख्यार्थम्' (p. 212).

1648. अनुमानव्यवस्थानात्तत्संयुक्तं प्रमाणं स्यात् । अपि वा सर्वधर्मः स्यात्तन्न्यायत्वाद्विधानस्य । ... कर्मधर्मो वा प्रवणवत् । तुल्यं तु कर्तृधर्मेण । जै. I. 3. 15–23; अनुमानात् स्मृतेराचाराणां च प्रामाण्यमिष्यते । येनैव हेतुना ते प्रमाणं तेनैव व्यवस्थिताः प्रामाण्यमर्हन्ति । तस्माद् होलाकादयः प्राच्यैरेव कर्तव्याः, आह्नीनैबुकादयो दाक्षिणात्यैरेव, उद्वृषभयज्ञादय उदीच्यैरेव । ... अपि वेति पक्षव्यावृत्तिः । एवंजातीयकः सर्वधर्मः स्यात् । कुतः तन्न्यायत्वात् विधानस्य । विधीयतेनेनेति विधानं शब्दः । सोऽनुमीयते स्मृत्या । ... तस्मात्सर्वधर्मता विधेर्न्याय्या । शबर; the word अनुमान means लिङ्ग or अनुमापक or कल्पक. The first two सूत्रs may be briefly but closely paraphrased as 'अनुमानस्य कल्पकस्य व्यवस्थितत्वात्प्रमाणमूलभूता श्रुतिः व्यवस्थापकोपपदसंयुक्ता स्यात् । न व्यवस्थितमूलत्वं भवितुमर्हति, अपि तु सर्वधर्मः स्यात् । मूलभूते विधायके वाक्ये सर्वधर्मत्वोपपादकस्य न्यायस्य सत्त्वात् ।' मीमांसाकौ. pp. 100-101. This अधिकरण is called होलाका because the first example in शबरभाष्य refers to the practice of होलाका. मेधा. on मनु VIII. 46 refers to उद्वृषभयज्ञ as a practice of the northerners. The जै. न्या. मा. explains: 'वसन्तोत्सवो होलाका । स्वस्वकुलागतं करञ्जार्कादिस्थावरदेवतापूजादिकमाह्नीनैबुकशब्देनोच्यते । ज्येष्ठमासस्य पौर्णमास्यां बलीवर्दानभ्यर्च्य धावयन्ति सोयमुद्वृषभयज्ञः ।.'

1649. Vide the following remark about the demand for the divine origin of laws and usages from Berolzheimer: "historically political power, legal regulation and customs were popularly conceived as expressions of the Divine Will" (Author's Preface, p. XLIV, in 'the World's Legal Philosophies').

such practices must be deemed to be meant for all, since the general rule about vedic injunctions is that they are applicable to all. The performer specially meant by each Vedic injunction is known in either of three ways,[1650] viz. by capability, by non-prohibition and by the employment of a special epithet or attribute. When it is said '*svargakāmo yajeta*' then only the three twice-born classes are meant, for, they alone are capable of tending the sacred fires and of possessing Vedic learning and a śūdra is not a fit person to whom that injunction can apply. Those who are guilty of grave sins (*patita*) and the impotent are prohibited from performing Vedic rites. When the Veda says '*rājā rājasūyena yajeta*' there is a special attribute of the performer (viz. being a kṣatriya) prescribed by the śruti and so no one else can perform Rājasūya. When none of these three exists a Vedic *vidhi* is in general meant for all (*sarvadharma*). The practices of Holākā, Vṛṣabhayajña and the like should not be held to be restricted to certain countries or people only, but should be inferred to be applicable to all. When a man leaves the east and goes to the south, he may still perform the Holākā festival; while a man from the eastern country itself may not perform it at all. Further the words 'southern, eastern and northern' are relative. A country that is called southern may be to the north of another. Therefore Holākā and other practices are not invariably concomitant with particular countries or peoples. Nor can it be said that those practices require those particular countries for their performance in the way in which śruti expressly requires the Vaiśvadeva rite (one of the four cāturmāsyas) to be performed on a spot that slopes towards the east. The Tantravārtika[1651] points out that persons receive appellations from names of countries on various grounds as being born in a country or as residing therein or as coming from that country or as going to that country. Medhātithi on Manu VIII. 46 says the same.

1650. त्रिधैव ज्ञायते कर्ता विशेषेण प्रतिक्रियम् । योग्यत्वाप्रतिषिद्धत्वविशेषोपपदान्वयैः ॥ तन्त्र. p. 245 ; यस्माच्छक्तमात्रं पुरुषं विधायकवाक्यमधिकरोति नातिरिक्तं विशेषणमपेक्षते तस्मात्तस्य सर्वविषयविधित्वं न्याय्यमित्यर्थः । न्यायसुधा p. 246 (explaining तन्न्यायत्वाद् विधानस्य).

1661. सम्बन्धैर्बहुभिर्देशसमाख्या हि प्रवर्तते । निवास-भव-जातत्व-तदागमनहेतुभिः ॥ तन्त्र. p. 251. The last half refers to Pāṇini IV. 3. 89, IV. 3. 53, IV. 3. 25, IV. 3. 74 respectively.; प्राच्यादिसमाख्यापि व्यभिचारिणी तद्देशगतानामपि केषांचिदनाचरणात् । चिरविनिर्गतपुत्रपौत्रादीनां चासत्यामपि समाख्यायामाचरणात् । तस्मादसति विशेषे सर्वधर्मत्वमाचाराणां स्मृतीनां चेति सिद्धम् । शास्त्रदीपिका (at end of Jai. I.3. 23).

The Tantravārtika explains that the first two sūtras are meant to refer to another question also, viz. whether the rules of the gṛhyasūtras[1652] and of such dharmasūtra works as the sūtra of Gautama are authoritative only as to certain groups or are meant to be authoritative for all. He begins by saying that the Purāṇas, the Manusmṛti and Itihāsa (i. e. the Mahābhārata) are equally authoritative for all people and then points out that the Gobhila-gṛhya and Gautama-dharmasūtra are traditionally accepted by the students of the Sāmaveda, that the dharmasūtra of Vasiṣṭha is accepted by the students of the Ṛgveda, the sūtra of Śaṅkha-Likhita by the followers of the white Yajurveda and the sūtras of Āpastamba and Baudhāyana by the followers of the Taittirīya Śākhā. The Śāstradīpikā explains that an author who was a student of the Sāmaveda taught his own work to his pupils who also learned the Sāmaveda under him, that these pupils in their turn taught that work to others and in that way there arose a tradition among the students of the Sāmaveda to study the sūtra of Gautama. Therefore, to say even as to gṛhya works that they are restricted to particular groups of persons is not correct. Similarly in the case of practices there is no epithet or attribute that is common to all those who practise them or which distinguishes those who do not observe them from those that observe them and therefore it is not possible to restrict such practices as Holākā to particular countries or groups of people.

The requisites of valid customs as laid down by the eminent writers of the Pūrva-mīmāṁsā school may now be summarised. Such customs must be ancient, must not be opposed to the express texts of the Veda or of smṛti, must be such as to be regarded as obligatory by the śiṣṭas and must be observed

1652. देशधर्मान्नुदाहृत्य संप्रत्येतद्विचार्यते । किं व्यवस्थितमूलास्ते किं वैषां सर्वधर्मता ॥ ...आद्यं सूत्रद्वयं यावदिदमन्यत्र चिन्त्यताम् । गृह्यगौतमसूत्रादिव्यवस्थासर्वगामिते ॥ पुराणमानवेतिहासव्यतिरिक्तगौतमवसिष्ठशङ्खलिखितहारीतापस्तम्बबौधायनादिप्रणीतधर्मशास्त्राणां गृह्यग्रन्थानां च प्रातिशाख्यलक्षणवत्प्रतिचरणं पाठव्यवस्थोपलभ्यते । तद्यथा । गौतमगोभिलीये छन्दोगैरेव च परिगृहीते । वासिष्ठं बह्वृचैरेव शङ्खलिखितोक्तं च वाजसनेयिभिः । आपस्तम्बीयबौधायनीये तैत्तिरीयैरेव प्रतिपन्ने । इत्येवं तत्र तत्र गृह्यव्यवस्थाभ्युपगमादि दर्शयित्वा विचारयितव्यम् । किं तानि तेषामेव प्रमाणानि, उत सर्वाणि सर्वेषामिति । तन्त्र. pp. 243-244 ; कर्ता हि छन्दोगः स्वशिष्यांश्छन्दोगान् स्वग्रन्थमध्यापयामास तेऽप्यन्यांश्छन्दोगानित्येवं गौतमीयस्य छन्दोगैः पाठः । तथापस्तम्बग्रन्थस्य तैत्तिरीयैरेवं गृह्यग्रन्थानामपीति व्यवस्थितधर्मविषयत्वमप्रमाणकम् । आचाराणां तु सर्वाचरितृनुगतमनाचारितृभ्यश्च व्यावृत्तमाकृतिव्यक्तिगुणसंस्थानादिकं न किंचिद्विशेषणं संभवति यदुपादाय होलाकाद्यधिकारं विशिंष्यात् । शास्त्रदीपिका p. 42.

by them with the consciousness that they are so, they must not have a seen or visible purpose, and they must not be immoral[1653]. It has to be remembered that the pūrvamīmāṁsā writers did not lay down anything about the binding character of usages that were peculiarly secular but restricted their remarks to customs and usages that had more or less an unseen or spiritual purpose. Khaṇḍadeva emphasizes this by stating 'only those customs can be deemed to be based on the Veda that are not opposed to the Veda and smṛtis and that are observed by respectable people under the belief that thereby they are carrying what dharma dictates'[1654]. Medhātithi on Manu[1655] II. 18 makes this position quite clear after quoting a verse of Kumārila 'a smṛti that is opposed to the Veda or is self-contradictory, or has a visible secular purpose or expressly states a motive (for observing its precepts) cannot be deemed to be based on the Veda'. The Mīmāṁsā-kaustubha (p. 51 on Jai. I. 3. 7) quotes a verse to the effects that 'only those whose ancestors also observed certain usages handed down from generation to generation would not incur blame by observing them (if they are opposed to śruti or smṛti), but not others (who

1653. यत्तु अहिच्छत्रब्राह्मणीनां सुरापानं दाक्षिणात्यानां च मातुलकन्यापरिणयादि तत्र केचिदेवं परिहरन्ति 'येषां परम्परायाताः पूर्वजैरप्यनुष्ठिताः। त एव तैर्न दुष्येयुराचारैर्नेतरे जनाः' इत्यापस्तम्बवचनात्, 'येनास्य पितरो ... दुष्यति' इति मनुवचनाच्च देशव्यवस्थया स्मृत्याचारयोः प्रामाण्यम्। अतश्च यस्मिन् देशे य आचारः पारम्पर्यक्रमागतः अतस्तदन्यदेशविषयैव तन्निषेधस्मृतिरिति न विरोध इति। तन्न ... आपस्तम्बवचनं तु गर्हानिराकरणपरतया व्याख्येयं मनुवचनं तु सतां मार्गमिति विशेषणादविरुद्धाचारपरं व्याख्येयमिति न विरोधः। अतश्चाहिच्छत्रब्राह्मणीसुरापानादेरनाचारत्वमेव। मी. कौ. p. 51 (on जै. I. 3. 7);

1654. श्रुतिस्मृत्यविरुद्धानां शिष्टैर्धर्मबुद्ध्यानुष्ठीयमानानामाचाराणां वेदमूलकत्वम्। अत एव स्मृतौ 'श्रुतिस्मृत्यविरुद्धो यः स सदाचार उच्यते' इत्युक्तम्। वार्तिके तु आर्यावर्तनिवासिशिष्टप्रयोज्यत्वमेव सदाचारत्वोपलक्षणम्। अतश्च तत्रैव श्रुतिकल्पनमित्युक्तम्। वस्तुतस्तु आर्यावर्तगतानामप्याचाराणां श्रुतिस्मृतिविरोधेऽप्रामाण्यात्सत्यैव सदाचारोपलक्षणत्वं न युक्तम्। अतश्चाचाराणामपि श्रुतिमूलकत्वात्प्रामाण्योपपत्तिः। मीमांसाकौस्तुभ pp. 43-44 (on जै. I. 3. 7).

1655. न च दृष्टकारणयोः स्मृत्याचारयोः प्रामाण्यम्। उक्तं च भट्टपादैः। विरुद्धा च विगीता च दृष्टार्थादिष्टकारणे। स्मृतिर्न श्रुतिमूला स्याद्या चैषा सम्भवश्रुतिः॥ मेधा. on मनु II. 18. This verse refers to five classes of smṛti texts that cannot be based on श्रुति. दृष्टार्था च आदिष्टकारणा च दृष्टार्थादिष्टकारणे (स्मृती); या च एषा संभवश्रुतिः is the fifth class, but the meaning is not clear. Sir Ganganath Jha in his translation of Medhātithi does not say whence this verse is taken, nor does he correctly render the words विगीता and दृष्टार्थादिष्टकारणे and he omits altogether the fourth pāda. The words या चैषा सम्भवश्रुतिः appear to mean 'that smṛti which declares its promulgation (by a sage) is not to be deemed to be based on Veda (since otherwise Veda will be held to be not *nitya*).

cannot rely on such a state of things)'. In a learned discussion on *bādha* Kumārila in his Tantravārtika (on Jai. III. 3. 14 pp. 859-860) brings together many *bādhas* out of which those that are relevant to this discussion are given in the note below[1656]. It says that inference is set aside by direct perception, smṛti by śruti, a smṛti not composed by an authoritative person and that is self-contradictory is set aside by a smṛti that is authoritative and not self-contradictory, a smṛti that has a visible worldly purpose by one that has an unseen spiritual purpose, a smṛti based on inference drawn from a śruti or based upon a commendatory vedic passage is set aside by a smṛti based upon (a direct) śruti text, a usage is set aside by a smṛti and one usage is set aside by another usage that is accepted by more respectable people &c.

1656. अथ यत्तत्र तत्रोच्यते इदमनेन बाध्यते (शबर)—प्रत्यक्षेणानुमानं ... श्रुत्या स्मृतिः, आप्तविनीतस्मृत्या अनाप्तविनीतास्मृतिः, अदृष्टार्थया दृष्टार्था, श्रुतिप्रभवया लिङ्गादिप्रभवार्थवादप्रभवा च, स्मृत्याप्याचारः, सोऽप्यभियुक्ततराचारेण सन्दिग्धमसंदिग्धेन, &c. तन्त्रवार्तिक pp. 859-860.

CHAPTER XXXIII

CUSTOMS AND DHARMAŚĀSTRA WORKS

It is now necessary to see how Dharmaśāstra works have dealt with the authority and binding force of customs and usages. *Sadācāra* is defined by Hārīta as follows[1657]:— the word 'sat' means 'good' and the good are those who are free from (moral) taint; the practices of such people are called *sadācāra*. Vide Manu II. 18, which also defines sadācāra. Even the most ancient sūtras testify to the fact that numerous customs and usages had arisen in different countries and villages. The Āśv. gṛ. (I. 7. 1–2) says,[1658] 'various indeed are the observances of (different) countries and villages; one should follow those in marriages; what, however, is common (to all or most) shall be declared by us'. The Āp. gṛ. (II. 15) declares, 'people should understand from women what procedure is to be observed (according to custom)' and the Āp. Dh. S. provides (I. 7. 20. 8 = II. 11. 29. 14) that one[1659] should regulate one's course of action (in difficult or doubtful matters) according to the conduct which is unanimously approved of in all countries by the Āryas (men of the three higher castes), who have been properly disciplined, who are aged, who have restrained their senses and who are neither covetous nor hypocritical and concludes with the aphorism (II. 11. 29. 15) 'some teachers hold that the rest of the dharmas (not set out in this work) may be understood from women and from men of all castes'. Baud. Dh. S.[1660] (I. 5. 13) states (on the subject of śrāddha) 'the usages of people should be followed as to other rites to be performed'. Several gṛhyasūtras (like Pāraskara II. 17, Mānava

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1657. साधवः क्षीणदोषाः स्युः सच्छब्दः साधुवाचकः । तेषामाचरणं यत्तु स सदाचार उच्यते ॥ हारीत q by परा. मा. I. part 1 p. 144. This is विष्णुपुराण III. 11. 3 quoted by the दीपकलिका on या. I. 7 as from that पुराण.

1658. अथ खलूच्चावचा जनपदधर्मा ग्रामधर्माश्च तान् विवाहे प्रतीयात् । यत्तु समानं तद्वक्ष्यामः । आश्व. गृ. I. 7. 1–2 ; vide H. of Dh. vol. II. p. 441 *n*. 1049 for remarks of हरदत्त and नारायण on these sūtras.

1659. सर्वजनपदेष्वेकान्तसमाहितमार्याणां वृत्तं सम्यग्विनीतानां वृद्धानामात्मवतामलोलुपानामदाम्भिकानां वृत्तसादृश्यं भजेत । एवमुभौ लोकावभिजयति । स्त्रीभ्यः सर्ववर्णेभ्यश्च धर्मशेषान्प्रतीयादित्येके । आप. ध. सू. II. 11. 29. 14–15. The first sūtra is the same as आप. ध. सू. I. 7. 20. 8.

1660. शेषक्रियायां लोकोऽनुरोद्धव्यः । बौ. ध. सू. I. 5. 13.

gr. I. 4. 6) refer to the practices of people that should be followed in such matters as commencing agricultural operations, holidays &c. It is needless to set out these in detail here. Manu[1661] IV. 178 pronounces the general prescription for all men, 'one should walk in the path of good men which their fathers and grandfathers trod; by so doing one will come to no harm'. For ordinary men this procedure is easy to understand and to follow. This dictum sets a premium on the attitude of no change in any matter for fear that change may lead to some unexpected harm and has been throughout the ages up to the present the motto of most people in India. As ācāra or sadācāra is tangible and requires no effort to decide between conflicting views, we find eulogies of it in the earliest smṛtis and purāṇas. Vide Manu IV. 155–158, Vas. VI. 6–8 (the first and last of which are the same as Manu IV. 157–158), Anuśāsanaparva 104. 6–9, Viṣṇu Dh. S. 71. 90–92 (which are almost the same as Manu IV. 155, 156, 158), Mārkaṇḍeya chap. 34, Brahmapurāṇa 121. 6–9, Viṣṇupurāṇa III. chapters 11–12, Kūrmapurāṇa (uttarārdha, chap. 15).

The general rule about the binding character of customs is set out as follows. Gaut. (XI. 20) observes,[1662] 'the dharmas (customs) of countries, castes and families, which are not opposed to the Vedic scriptures, are authoritative and binding'. Gaut. provides in the next two sūtras that cultivators, traders, herdsmen, money-lenders and artisans can lay down conventions or usages that would be binding on the respective classes, that when a dispute arises as to these usages the king should learn affairs from those who wield authority over those classes and decide the dispute accordingly. Vas. I. 17 states, 'Manu has declared that the (peculiar) customs of countries, castes and families may be followed in the absence of rules propounded by the Veda', and in XIX. 7 prescribes that the king should

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1661. येनास्य पितरो याता येन याताः पितामहाः। तेन यायात्सतां मार्गं तेन गच्छन्न रिष्यति॥ मनु. IV. 178. The तन्त्रवार्तिक p. 211 (on Jai. I. 3. 7) quotes this, reads दुष्यति for रिष्यति and remarks 'येषां तु यः पित्रादिभिरेवाचरितः स्मृत्यन्तरप्रतिषिद्धश्च ते तं परिहरन्त्येव.' मेधा. very appositely explains, अविदुषां मूलम-आम्नानादुपदेशोऽयमिति। ... यदि पितृपितामहादिभिः कैश्चित्कथंचिदधर्म आचरितपूर्वः स न आश्रयणीय इति सतां मार्गमित्याह।. Vide also मिता. on या. I. 254 where मनु IV. 178 is quoted and H. of Dh. vol. II. p. 460 *n*. 1086 where मेधा. on मनु II. 18 is quoted.

1662. देशजातिकुलधर्माश्चाम्नायैरविरुद्धाः प्रमाणम्। कर्षकवणिक्पशुपालकुसीदिकारवः स्वे स्वे वर्गे। तेभ्यश्च यथाधिकारमर्थान्प्रत्यवहृत्य धर्मव्यवस्था। गौ. XI. 20–22; देशधर्मजातिधर्मकुलधर्माञ्छ्रुत्यभावादब्रवीन्मनुः। वसिष्ठ I. 17.

enforce these among the four varṇas. Āp. Dh. S. II. 6. 15. 1 appears to lay down that the customs of countries and families (if not opposed to Veda) are authoritative and are to be followed in the respective countries or families. But this view seems to be unacceptable to Baudh. Dh. S. (I. 1. 19–26) which says,[1663] 'there is difference of opinion regarding five (practices) in the South as well as in the North. We shall explain those peculiar to the south. They are: to eat in the company of (in the same plate with) one whose upanayana is not performed, to eat in the company of one's wife, to partake of stale food, to marry the daughter of a maternal uncle or of a paternal aunt. Now (the customs peculiar) to the north are: to sell wool, to drink rum, to deal in the sale of animals with an upper and a lower row of teeth, to follow the profession of arms and to travel by sea. He who follows (these practices) in any other country than where they are generally in vogue commits sin. For, in respect of these customs the authoritativeness must be restricted to the respective countries. Gautama declares that this is false. And one should not approve of (accept) either (of the two sets of practices), because they are opposed to the tradition of śiṣṭas (or opposed to the smṛtis and the views of śiṣṭas)'. The Tantravārtika[1664] (p. 211) mentions the argument of some concerning these passages of Āp. and Baud. viz. that Āpastamba's very general statement that practices of countries and families are authoritative in the respective countries cannot be accepted

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1663. पञ्चधा विप्रतिपत्तिर्दक्षिणतस्तथोत्तरतः। यानि दक्षिणतस्तानि व्याख्यास्यामः यथैतदनुपेतेन सह भोजनं स्त्रिया सह भोजनं पर्युषितभोजनं मातुलपितृष्वसृदुहितृगमनमिति अथोत्तरत ऊर्णाविक्रयः सीधुपानमुभयतोदद्भिर्व्यवहार आयुधीयकं समुद्रसंयानमिति । इतरदितरस्मिन् कुर्वन् दुष्यतीतरदितरस्मिन् । तत्र तत्र देशप्रामाण्यमेव स्यात् । मिथ्यैतदिति गौतमः । उभयं चैव नाद्रियेत शिष्टस्मृतिविरोधदर्शनात् । बौ. ध. सू. I. 1. 19–26. The स्मृतिच. I. p. 10 explains: इतरो दाक्षिणात्यः इतरस्मिन् देशे उदीच्यदेशे अनुपनीतभोजनं कुर्वन् दुष्यतीति न स्वदेशे । कुतः देशप्रामाण्यात् तद्देशनिबन्धनत्वात्प्रामाण्यस्येत्यर्थः । Compare स्मृतिरत्न q. by स्मृतिमु. (वर्णाश्रम p. 130) 'अनब्रह्मचारिदाराद्यैः सार्धं भोजनकर्म च । मातुलादिसुतायां च विवाहः शिष्टसंमतः । इत्येते दाक्षिणात्यानामपि गीता (मविगीता ?) उदाहृताः । समुद्रयाने मांसस्य भक्षणं शस्त्रजीविका । शीधुपानमुदीच्यानामविगीतानि धर्मतः ॥' Taking food in the same plate with one's wife is forbidden by Manu IV. 43 and Yāj. I. 131. Vide H. of Dh. vol. II p. 765 *n*. 1833.

1664. सर्वेषामेवमादीनां प्रतिदेशं व्यवस्थया । आपस्तम्बेन संहृत्य दुष्टादुष्टत्वमाश्रितम् ॥ येषां परम्परायाताः पूर्वजैरप्यनुष्ठिताः । त एव तैर्न दुष्येयुराचारैर्नेतरे जनाः । ...ततश्च मन्वादिवाक्यप्रतिषिद्धाचाराणां प्रामाण्यमशक्यमभ्युपगन्तुम् । आपस्तम्बवचनं तु बौधायनेन स्मृतिविरुद्धाचारोदाहरणान्येव प्रयच्छता निराकृतम् । स्पष्टकामादिहेतुत्वान्तरदर्शनाच्च विरुद्धाचाराणामापस्तम्बवचनस्य वा श्रुतिमूलत्वोपपत्तिः । तन्त्र. p. 211. The व्य. म. p. 22 quotes the verse येषां परम्परा° and remarks 'न दुष्येयुः अव्यवहार्या राजदण्ड्याश्च न भवेयुरित्यर्थः'.

as valid, as it is opposed to the views of Gaut. (XI. 20), as Baud. expressly states that certain practices though prevalent in certain localities cannot be accepted as valid and binding even in those localities because they are opposed to the express words of such authoritative and highly venerated smṛtis (as those of Manu). Manu in several places provides for the enforceability of customs and usages. In Manu VII. 203 it is said, 'the conqueror should hold as authoritative and binding the lawful customs of the conquered country, just as they are stated to be' and in Manu VIII. 41 and 46[1665] it is provided, 'A king who knows dharma (sacred law) should carefully inquire into the customs of castes, of countries, of guilds and of families and settle (or enforce) the customs peculiar to each. Whatever may have been practised by the good and by twice-born men devoted to dharma, that shall be established (by the king) as the law, provided it be not opposed to the (customs of) countries, families and castes'. Medhātithi adds that the king has to see whether the customs of countries, families, castes and guilds are directly in conflict with the Veda or are harmful to others or utterly immoral (such as marrying one's mother) and only those that are found not to be so are to be enforced by the king and he[1666] adds on Manu II. 6 that the practices of śiṣṭas (persons who are well conducted, free from greed and learned in the Veda) on matters on which the Veda and smṛti are silent and which they observe with the consciousness that they (practices) are right (dharma) should be deemed to be based on Veda. He offers certain illustrations of such practices and also

1665. जातिजानपदान्धर्मान् श्रेणीधर्मांश्च धर्मवित्। समीक्ष्य कुलधर्मांश्च स्वधर्मं प्रतिपादयेत्॥ मनु. VIII. 41, on which मेधा. remarks 'समीक्ष्य विचार्य किमाम्नायैर्विरुद्धा अथ न तथा पीडाकराः कस्यचिदुत न एवं विचार्य येऽविरुद्धास्तान् प्रतिपादयेत् अनुष्ठापयेदित्यर्थः। ... मातृविवाहादिः सार्वभौमेन निवारणीयः। ... ... एककार्यापन्ना वणिक्कारुकुसीदचातुर्विद्यादयः तेषां धर्माः श्रेणिधर्माः'. It should be noted that in other works also the Pārasikas were credited with the highly immoral practice of marrying one's own mother. Vide यशस्तिलकचम्पू 'श्रूयते हि वङ्गीमण्डले नृपतिवेषाम्बुजेष्वात्तोपयोग पारसीकेषु च स्वसवित्रीसंयोगः सिंहलेषु त्रिश्वामित्रसृष्टिप्रयोग इति।' (4th आश्वास p. 95). The स्मृतिच. (I. p. 10) and स्मृतिमु. (वर्णाश्रम p. 130) quote several verses from an anonymous smṛti one of which is तथा मातृविवाहोऽपि पारसीकेषु दृश्यते.

1666. आचारश्चैव साधूनां चशब्देन वेदविदामिति सम्बध्यते। पदद्वयेन शिष्टत्वं लक्ष्यते। शिष्टानां च आचारः सोऽपि धर्मे मूलम्। आचारो व्यवहारः अनुष्ठानं यत्र श्रुतिस्मृतिवाक्यानि न सन्ति शिष्टाश्च धर्मबुद्ध्यानुतिष्ठन्ति तदपि वैदिकमेव पूर्ववत्प्रतिपत्तव्यम्। यथा विवाहादौ कङ्कणबन्धनादि माङ्गलिकत्वेन यत् क्रियते या च कन्यायास्तदहर्विवाहयिष्यमाणायाः स्वपातशुक्लपक्षचतुष्पथादिपूजा देशभेदेन तथा चूडासंख्या देशभेदश्च (वाक्य ?) या जातिरूपादीनां दुर्गादीनामनुज्ञप्तिः मिथहितवचनाभिवादनाभ्युत्थानादिरूपा। मेधा. on मनु II. 6.

relies[1667] upon the words of the Mahābhārata (Vanaparva 313. 117), 'what is true dharma is concealed as in a dark cave; the (only) path is to follow great men'. In I. 118 Manu declares that the ancient (or long enduring) laws (or customs) of countries, castes, families and the rules among heretics and companies (of traders and the like) have been dealt with by him in the śāstra (Institutes). Yāj. I. 343 provides that when a conqueror reduces a country to subjection he should preserve intact whatever customs, laws and judicial procedure, and family usages are handed down from generation to generation therein (provided they are not opposed to śāstras and, as the Mit. says, he should not cause confusion by imposing the usages of his own country on the conquered country). Yāj. II. 192 (like Manu and Gaut.) provides that the varying usages and conventions of śreṇis (guilds of artisans), naigamas (traders), heretics and associations (of soldiers and the like) should be respected by the king in the same way as he honours the usages of learned brāhmaṇas. About the latter Yāj. II. 186 says that the king should sedulously enforce the conventions of learned brāhmaṇas which are not opposed to the dictates of the Veda and smṛti (such as about pastures, water-courses and wells and the preservation of temples) and he should also enforce his edicts that are not opposed to Veda and smṛti (such as making provision for travellers and prohibiting the sale of horses to an enemy &c.). Kauṭilya prescribes[1668] that the king should follow as regards inheritance and partition the customs that are in vogue in a country, a caste, a *saṅgha* (company or guild) or a village. Devala[1669] and Bṛhatparāśara (X. p. 281) have a verse very similar to Yāj. I. 343. The Mahābhārata remarks that there is no custom or practice that can be said to be beneficial

1667. अथाप्ययं न्यायो महाजनो येन गतः स पन्था इति... । विद्वांसो ह्यत्र निष्कामाः प्रवृत्तिपूर्वा अभिमताश्च लोके । अथाप्रामाणिकी प्रवृत्तिः सापि वेदप्रामाण्यात्सिद्धैवेति । मेधा. on मनु II. 1. The whole verse is : तर्कोऽप्रतिष्ठः श्रुतयो विभिन्ना नैको ऋषिर्यस्य मतं प्रमाणम् । धर्मस्य तत्त्वं निहितं गुहायां महाजनो येन गतः स पन्थाः ॥ वनपर्व 313. 117; the words 'धर्मस्य तत्त्वं निहितं गुहायां' are quoted by विश्वरूप on या. I. 9.

1668. देशस्य जात्याः सङ्घस्य धर्मो ग्रामस्य वापि यः । उचितस्तस्य तेनैव दायधर्मं प्रकल्पयेत् ॥ अर्थशास्त्र III. 7. p. 165; अक्षपटलमध्यक्षः ... निबन्धपुस्तकस्थानं कारयेत् । तत्राधिकरणानां संख्या... देशग्रामजातिकुलसङ्घातानां धर्मव्यवहारचरित्रसंस्थानं... निबन्धपुस्तकस्थं कारयेत् । अर्थशास्त्र II. 7 p. 62.

1669. यस्मिन्देशे पुरे ग्रामे त्रैविद्ये नगरेऽपि वा । यो यत्र विहितो धर्मस्तं धर्मं न विचालयेत् ॥ देवल in स्मृतिच. I. p. 10.

to all alike[1670]. From this it follows that variations in practices were to be tolerated by the king. Bṛhaspati[1671] advises the king to keep intact the customs of countries, castes and families that have been long in vogue in them and states that otherwise the subjects become irritated and disaffected and there is loss of wealth and army. He gives certain striking illustrations of peculiar practices: 'members of the twice-born classes in the southern countries take in marriage their maternal uncle's daughter; in the middle country (the country between the Himālaya and the Vindhya lying to the west of Prayāga and to the east of Vinaśana where the Sarasvatī disappears, as said by Manu II. 21) artisans and menial workers eat the flesh of a cow; in the eastern countries people (all including brāhmaṇas) eat fish and women are given to adultery; in the north women drink liquor and contact with them even in their monthly illness is allowed; the people of the *Khaśa* country take as wives the widows of their own brothers; these several people are not liable to undergo punishment or penance because of their doing these things in the respective countries'. Medieval writers differed about the meaning of the last half verse. The Madanaratna said (acc. to V. P. p. 22) that there is neither punishment nor prāyaścitta when the above practices which are opposed to smṛti texts are indulged in by the inhabitants of the countries specified, while the V. P. p. 22 holds that there is only absence of punishment at the king's hands for these people in those countries, but they are still liable to undergo prāyaścitta and that if these practices are followed in other countries both punishment and prāyaścitta have to be undergone.

1670. न हि सर्वहितः कश्चिदाचारः संप्रवर्तते । शान्ति 261. 17.

1671. देशजातिकुलानां च ये धर्मास्तत्प्रवर्तिताः । तथैव ते पालनीयाः प्रक्षुभ्यत्यन्यथा प्रजाः । जनापरक्तिर्भवति बलं कोशश्च नश्यति । उद्वाह्यते दाक्षिणात्यैर्मातुलस्य सुता द्विजैः । मध्यदेशे कर्मकराः शिल्पिनश्च गवाशिनः । मत्स्यादाश्च नराः पूर्वे व्यभिचाररताः स्त्रियः । उत्तरे मद्यपा नार्यः स्पृश्या नृणां रजस्वलाः । खशजाताः प्रगृह्णन्ति भ्रातृभार्यामभर्तृकाम् । अनेन कर्मणा नैते प्रायश्चित्तदमार्हकाः ॥ बृह. q. in स्मृतिच. I. 10 (except जनाप ... नश्यति and last half), व्य. नि. p. 16 (except first verse and a half), मदनरत्न (folio 5a except half verse खशजाताः), स्मृतिमु. (वर्णाश्रम p. 130), शुक्रनीति IV. 5. 48-52, व्य. मयूख p. 7 (except the half verse खश &c. and mentions नराः सर्वे as v. l.), व्य. प्र. p. 22. खश° represents the Khakha tribe in the Vitastā valley. उक्तं च बृहस्पतिना । अभर्तृकाभ्रातृभार्याग्रहणं चातिदूषितम् । कुले कन्याप्रदानं च देशेष्वन्येषु दृश्यते ॥ हरदत्त on आप. ध. II. 10. 27. 3 (Bühler's ed.).

Kāt.[1672] defines what is meant by the customs of countries and families and states how and when they are to be enforced: 'That is said to be the custom of a country, which is in vogue in a country, is of long standing and is not opposed to the Veda and Smṛti. That is called family custom which has come down hereditarily in a family as right conduct (dharma) to be observed (by members of that family); the king should preserve it as it is. In disputes between the residents of the same country or capital, hamlet of cowherds, town or village the decision should be based on their own conventional usages, but in disputes between inhabitants of these and others the decision must be in accordance with the sacred texts. Therefore the king should decide the causes of people according to the rules of śāstra: but in the absence of texts he should carry out (the administration of justice) according to the usage of the country. Whatever conventions are settled in accordance with the consent of (the people of a) country should always be preserved in writing sealed with the royal seal. Such conventions should be sedulously upheld as if they were the dictates of śāstra and the king should decide (disputes) after carefully considering them.' Here Kāt. is principally concerned with the decision of legal disputes on the basis of the customs of countries and families, but his rules also have a general application. He also states that in the case of the conflict of laws by which the parties are governed śāstra prevails. Pitāmaha[1673] has a similar verse about the usages of towns, villages and guilds and mentions that Bṛ. held the same view. Manu also (VIII. 3) requires the king to decide the disputes of people according to principles drawn from local customs (*deśadṛṣṭa hetu*) and from the Institutes of law (*śāstradṛṣṭa*). Medhātithi (on Manu VIII. 3) gives some interesting illustrations of local customs; viz. in certain southern localities a sonless widow

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1672. यस्य देशस्य यो धर्मः प्रवृत्तः सार्वकालिकः । श्रुतिस्मृत्यविरोधेन देशदृष्टः स उच्यते ॥ गोत्रस्थितिस्तु या तेषां क्रमादायाति धर्मतः । कुलधर्मं तु तं प्राहुः पालयेत्तं तथैव तु ॥ देशपत्तनगोष्ठेषु पुरग्रामेषु वासिनाम् । तेषां स्वसमयैर्धर्मशास्त्रतोऽन्येषु तैः सह ॥ तस्माच्छास्त्रानुसारेण राजा कार्याणि साधयेत् । वाक्याभावे तु सर्वेषां देशदृष्टेन संनयेत् ॥ देशस्यानुमतेनैव व्यवस्था या निरूपिता । लिखिता तु सदा धार्या मुद्रिता राजमुद्रया । शास्त्रवद्यत्नतो रक्ष्या तां निरीक्ष्य विनिर्णयेत् । कात्या. q. by स्मृतिच. II. p. 26 (all except the verse गोत्रस्थितिस्तु), परा. मा. III. 41 (has first, 3rd and 4th), अपरार्क p. 599 (has the fourth), व्य. प्र. pp. 21–22 (has 2nd and 4th), व्य. नि. pp. 15–16 (has the first two).

1673. ग्रामगोष्ठपुरश्रेणिसार्थसेनानिवासिनाम् । व्यवहारश्चरित्रेण निर्णेतव्यो बृहस्पतिः । पितामह q. by स्मृतिच. II. p. 26.

occupies a square low table in the hall of justice, when she is struck with dice by the judicial officers and then she gets her husband's property (this is a reminiscence of Nirukta III. 5 explaining Ṛg. I. 25. 7), in the north there is a custom that when certain persons come on behalf of a bridegroom seeking for a virgin in marriage and they are fed at the house of the girl's father then it is implied that there is a promise to give that girl in marriage to that particular bridegroom. These two customs are not opposed to any śruti or smṛti (and even the V. P. p. 10 refers to the second as prevalent in the north and Madhyadeśa). But Medhātithi mentions other local usages that are opposed to smṛti e. g. grain is lent in spring and in the autumn of the same year double of it is taken. This is opposed to the rules of smṛti laying down rates of interest.

Very difficult questions arise in regard to the relative force of śruti, smṛti and sadācāra and numerous rules have been laid down in cases of apparent and real conflicts among them. As Manu II. 6, Vas. I. 4–5 and Yāj. I. 7 mention the sources of dharma to be śruti, smṛti and sadācāra in that order, the Mitākṣarā remarks[1674] that 'in case of conflict, each preceding one of those three has more force (or binding character) than each succeeding one.' Śruti or Veda is recognised by all smṛti writers as the highest or supreme authority for those who desire to know what dharma[1675] is (vide Manu II. 13 and Yāj. I. 40). If two vedic texts of equal authority are in conflict, then Gaut[1676] I. 5, Manu II. 14 and Jābāli declare that there is an option. For example, there are two Vedic texts 'he takes the ṣoḍaśin cup in the Atirātra sacrifice' and 'he does not take the ṣoḍaśin cup in the Atirātra'. In this case there is an option. Similarly Vedic texts say that the daily Vedic agnihotra may be performed after sunrise, or before sunrise or when neither the sun nor stars are visible. Therefore there is an option, viz. the daily agnihotra offering may be made at any one of the three times specified (Manu II. 15). But a vedic text which is in apparent conflict with another is not always of equal force with that other. In such a case there is no option, and various rules are laid

1674. एतेषां विरोधे पूर्वपूर्वस्य बलीयस्त्वम्। मिता. on या. I. 7.

1675. धर्मं जिज्ञासमानानां प्रमाणं परमं श्रुतिः। मनु. II. 13 ; धर्मे ... प्रथमं श्रुतिः। द्वितीयं तु स्वशास्त्राणि तृतीयं लोकसंग्रहः॥ वृद्धगौतम XIV. p. 599 ; vide या. I. 40.

1676. तुल्यबलविरोधे विकल्पः। गौ. I. 5 ; श्रुतिद्वैधं तु यत्र स्यात्तत्र धर्मावुभौ स्मृतौ॥ स्मृतिद्वैधे तु विषयः कल्पनीयाः पृथक् पृथक्॥ जाबालि q. by स्मृतिच. II. p 496. The first half of Jābāli's verse is the same as Manu II. 14.

down in the Pūrvamīmāṁsā some important ones among which will be discussed at length in the section on Pūrvamīmāṁsā. Such texts may be explained by holding that one lays down a general rule (sāmānya), while the other lays down a special rule (viśeṣa) or an exception, or that one is a *vidhi* and the other merely an *arthavāda* or that the two texts have different scopes or refer to different ages &c. All these rules about the interpretation of Vedic texts have been held to apply to smṛti passages. For example, Manu VIII. 381 is a general rule absolutely prohibiting the killing of a brāhmaṇa. While Manu VIII. 350 allowing the killing of a brāhmaṇa in self-defence is a special rule or may be regarded as a mere arthavāda (viz. even a guru who is really not to be killed on any account may be killed when he is an ātatāyin, what of others, as the Mit. on Yāj. II. 21 explains). Similarly Manu VIII. 351 saying that there is no fault (i. e. no sin, no punishment and no prāyaścitta) in slaying an ātatāyin has restricted scope as applying only to an ātatāyin who is not a brāhmaṇa. A few more examples will be given immediately below.

In cases of conflict between śruti and smṛti, the rules laid down by the Pūrvamīmāṁsā have already been explained (pp. 832-34). Jaimini VI. 1. 13-14 and Śabara furnish an example. If, relying on Manu VIII. 416, the pūrvapakṣa were to argue that women own no wealth and so should not engage in a vedic sacrifice then as that smṛti so interpreted is opposed to the Veda it may be discarded by women[1677]. Smṛtis also lay down certain general rules on that point. Laugākṣi[1678] and Jābāla lay down that in case of contradiction between śruti and smṛti, the former has greater force and that if there is no contradiction then what is laid down in the smṛti should be observed as if it were laid down by the Veda. The Mit. on Yāj. III. 46 admits that a proposition of the Veda cannot be set aside (*bādhita*) by even a special proposition in a smṛti text. But in spite of the general proposition commentators like Viśvarūpa, Medhātithi and Vijñāneśvara

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1677. फलोत्साहाविशेषात्तु । जै. VI. 1. 13; यदि स्मृतिमनुबध्यमाना परवशा निर्धना च स्यात्, यजेतेत्युक्ते सति न यजेत। तत्र स्मृत्या श्रुतिर्बाध्येत। न चैतन्न्याय्यम्। तस्मात्फलार्थिनी सती स्मृतिमप्रमाणीकृत्य द्रव्यं परिगृह्णीयाद्यजेत चेति। शबर.

1678. श्रुतिस्मृतिविरोधे तु श्रुतिरेव गरीयसी। अविरोधे सदा कार्यं स्मार्तं वैदिकवत्सदा ॥ लौगाक्षि q. by हरदत्त on गौ. I. 5 and स्मृतिच. I. p. 7, आह्निकतत्त्व p. 191; मित्रमिश्र in his commentary on या. II. 21 reads (without naming the writer) श्रुति ... गरीयसी। परस्परविरोधे तु योगयुक्तं (v. l. न्याययुक्तं) प्रमाणवत् ॥. The अधिकरणकौमुदी of देवनाथ reads परस्पर ... न्याययुक्तं प्रमाणवत्.

had to admit that what was laid down by śruti texts was set aside or contradicted or abandoned by smṛti texts or by popular sentiment. After the Udayanīyā (concluding *iṣṭi*) in the Agniṣṭoma sacrifice was finished, a rite was prescribed by Vedic texts in which a barren cow (called Anūbandhyā) was sacrificed for Mitra and Varuṇa. But later on this was condemned and in lieu of a cow āmikṣā (mixture of heated milk and curds) was substituted. Vide H. D. II. pp. 1200-1201 for the anūbandhyā cow and p. 628 n. 1198 above for the verse quoted by the Mit. on Yāj. II. 117 condemning cow sacrifice in Kaliyuga. Yāj. III. 234 puts *govadha* (slaughter of a cow) at the head of upapātakas. Medhātithi on Manu IV. 176 after stating that even such acts as donating all one's property in the Viśvajit sacrifice or killing a cow should not be done (though sanctioned by the Veda) remarks that he gives that explanation following his predecessors' views but that to him it appears that an express śruti text cannot be set aside by a smṛti passage[1679]. Viśvarūpa also (on pp. 25-26) after adverting to the fact that Yāj. III. 234 places *govadha* at the head of *Upapātakas* remarks that this may apply to the killing of cows spoken of in smṛtis such as at the time of samāvartana (vide Manu III. 3) and that the rule must be upheld that a smṛti that is in conflict with an express text of the Veda is to be set aside. Sometimes even a smṛti text though theoretically weaker than śruti was allowed to prevail over a śruti. For example, the Veda prescribes the filling of the cups of wine in Sautrāmaṇī iṣṭi, but this is one of the matters prohibited in Kali[1680] (vide chapter on Kalivarjyas below).

The general rule is that when a custom or usage is opposed to the text of the Veda the latter must prevail. So early a writer as Āpastamba states this rule emphatically in several places. In Āp. Dh. S. I. 1. 4. 8 it is stated[1681]: 'For, an explicit śruti text has greater force than ācāra (usage) from which a śruti text (on which it may be supposed to be based)

1679. न हि प्रत्यक्षश्रुतिविहितस्य स्मृत्या बाधो न्याय्यः। मेधा. on मनु. IV. 176; तेन वेदविरुद्धाया स्मृतेर्बाध इति स्थितिः। विश्वरूप p. 26 on या. I. 7.

1680. क्वचिद् दुर्बलेनापि बलवतो बाधः। यथा—सौत्रामण्यां सुराग्रहान् गृह्णातीति प्रत्यक्षश्रुतेरपि कलौ युगे स्विमान् धर्मान् वर्ज्यानाहुर्मनीषिणः—इति स्मृत्या। अन्यथानर्थक्यापत्तेः। परिभाषाप्रकाश p. 27.

1681. श्रुतिर्हि बलीयस्यानुमानिकादाचारात्। आप. ध. सू. I. 1. 4 8; विप्रतिषेधे श्रुतिलक्षणं बलीयः। आप. ध. I. 11. 30. 9; त्रैविद्यवृद्धानां तु वेदाः प्रमाणमिति निष्ठा। तत्र यानि श्रूयन्ते व्रीहियवपश्वाज्यपयःकपालपत्नीसम्बन्धान्युच्चैर्नीचैः कार्यमिति तद्विरुद्ध आचारोऽप्रमाणमिति मन्यन्ते। आप. ध. सू. II. 9. 23. 9.

may be inferred.' In I. 11. 30. 8–9 Āp. Dh. S. says, 'during the morning and evening twilights a snātaka should be seated outside the village and should restrain his speech (should not speak about worldly matters); but (an agnihotrin must not go out for) what is enjoined by śruti is of more force in case of conflict of duties'. Similarly in Āp. II. 9. 23. 8–9, 'It is the settled view of those who are deeply learned in the three Vedas that they are (highest) authority. They consider that the rites which are there prescribed for performance with rice, *yava*, animals, clarified butter, milk, potsherds (in conjunction) with the wife and accompanied by loudly or inaudibly recited (mantras) must be performed and that a usage opposed to these rites is without authority'. In spite of this and the doctrine of the Pūrvamīmāṁsā stated above (p. 843) usages sprang up that were opposed to or gave the go-by to the prescriptions of the Veda as will appear a little below and particularly in the section on Kalivarjya.

The conflict of smṛtis among themselves presents much greater difficulties. From very ancient times authors of smṛtis differed greatly among themselves. A few striking examples may be cited. Āp. Dh. S. (I. 6. 19. 2–12) cites the views of ten predecessors on the question of the persons whose food may be partaken of by a brāhmaṇa (*ka āśyānnaḥ*). The difference between Gautama and Baudhāyana on the one hand and Āp. on the other on the question of the validity of certain usages in certain localities has already been referred to (p. 858). In III. 16 Manu mentions three views (and four sages) on the question of the position of a brāhmaṇa who marries a śūdra wife or has a son or a child from her. Baud. Dh. S. I. 8. 2, Manu III. 13, Viṣṇu Dh. S. 24. 1–4, Pār. Gṛ. I. 4, Vas. I. 25 show that brāhmaṇas were allowed to have śūdra women as wives. But Yāj. I. 56 emphatically dissents from this by stating 'this is not my view'. In this state of affairs the medieval digests and commentators were hard put to it to evolve rules of interpretation. One rule early evolved was that when two smṛti texts were in conflict, 'reasoning based on the practices of elders (śiṣṭas) was of greater force' (Yāj. II. 21)[1682]. The Mit. explains that ratiocina-

1682. स्मृत्योर्विरोधे न्यायस्तु बलवान् व्यवहारतः । या. II. 21, on which the व्य. प्र. p. 13 remarks 'न्यायानुपष्टब्धस्मृत्यपेक्षया न्यायोपष्टब्धा स्मृतिर्बलवतीति न्यायानुपष्टब्धस्मृतेस्तात्पर्यान्तरकल्पना कार्येति । तस्य चोत्सर्गापवाद—विषयव्यवस्था—विकल्पादिरूपस्य

(*Continued on the next page*)

tion may take the form of holding that one text lays down a general rule and the other lays down a special rule (which prevails over a general rule), or the text may be held to relate to different sets of circumstances or in the last resort it may be held that there is an option, but in arriving at these conclusions the practice of the old or of śiṣṭas who follow the rule in one text and discard or avoid the rule in the other text is the guide[1683]. Bṛ.[1684] gives the following warning to those who do not take reasoning into consideration: 'The decision (in a cause) should not be given by merely relying on śāstras, for in the case of a decision devoid of reasoning loss of dharma results'. Nār. (I. 40) provides in a strain similar to the Mit., 'when there is conflict between two texts of dharmaśāstra, it is declared that the method to adopt is to resort to reasoning, for the practices (of śiṣṭas) are of great force and the strict letter of the law is overruled by them (or properly understood through them)'. These provisions remind us of the working of the principle of *aequitas* applied by the prætors in Rome to the rigid older legislation or the influence of Equity in English Law. When

(*Continued from the last page*)

न्यायस्य प्रत्यायकं हेतुमाह व्यवहारत इति । वृद्धव्यवहारादन्वयव्यतिरेकादिरूपादनादिव्युत्पत्त्यपरपर्यायान्न्यायः प्रत्येतव्य इत्यर्थः ।. विश्वरूप reads स्मृतेर्विरोधे and gives three interpretations of this. One is the same as that of the Mit. The other two are; (2) when there is a conflict between smṛti and reasoning, smṛti is stronger (he approves of this); (3) in case of conflict nyāya is stronger than smṛti. मित्रमिश्र in his commentary on या. II. 21 explains व्यवहारतः differently as ' व्यवहारतः व्यवहारे विषये '.

1683. In *Bhau v. Sundrabai* P. J. for 1874 p. 250, where the question was whether daughters were excluded from inheritance as regards the Utpat family of priests at the temple of Vithoba at Pandharpur), Yāj. II. 21 was translated (at p. 252) as follows: 'if two texts be opposed *usage* is of force for their construction'. In *Chunilal v. Surajram* 33 Bom. 433 at p. 439 Yāj. II. 21 is rendered as 'where there is a conflict between two or more smṛtis that one should be accepted, which is conformable to equity'. The former rendering is rather obscure and the latter does not translate Yāj. closely. The exact meaning of 'equity' in this translation is not clear. It certainly does not mean 'equity' in the strict sense of English Law.

1684. न्यायमनालोचयतो दोषमाह बृहस्पतिः । केवलं शास्त्रमाश्रित्य न कर्तव्यो हि निर्णयः । युक्तिहीने विचारे तु धर्महानिः प्रजायते ॥ व्य. मयूख p. 7. The verse is q. by परा. मा. III. p. 39, व्य. मा. p 282, स्मृतिच. II. p. 24, व्य. प्र. p. 13 ; धर्मशास्त्रविरोधे तु युक्तियुक्तो विधिः स्मृतः । व्यवहारो हि बलवान् धर्मस्तेनावहीयते ॥ नारद I. 40. युक्ति means लोकव्यवहार acc. to व्य. मा. p. 282. The व्यवहारतत्त्व (p. 199) says, धर्मशास्त्रयोस्तु विरोधे लोकव्यवहार एवादरणीयः । ... अवहीयते अवगम्यते हि गतावित्यस्माद्धातोः.

old rules become too narrow or are deemed to be not in harmony with the views of a changing or progressive society, it was thought to be the privilege of the king or the judge to adopt his practice to the existing state of society and not to decide a case by a too strict adherence to ancient dicta.

Another rule that was laid down was that in case of conflict between dharmaśāstra and arthaśāstra, the former is of more weight or authority or that one should discard the rule in the arthaśāstra[1685] (Āp. Dh. S. 1. 9. 24. 23; Yāj. II. 21 ; Nār. I. 39 ; Kāt. 20). Vide pp. 8-9 above for an explanation of this rule. The rule of the arthaśāstra has the accomplishment of a visible or worldly purpose as the goal, while the dharmaśāstra rule has as its purpose the securing of unseen or spiritual results. Therefore the latter from a spiritual or ethical point of view is superior to the former.

Several other methods of resolving conflicts between smṛtis may be mentioned here. Bṛ.[1686] states: 'Manusmṛti occupies a pre-eminent position because it puts together the purport of the Vedas ; that smṛti which is in conflict with the purport of Manu is not commended'. Aṅgiras also states that to follow the words (of another smṛti) disregarding the unrivalled dharmaśāstra of Manu would not be beneficial to a person. The Mit. on Yāj. III. 300 speaks of the Manusmṛti and others as the great smṛtis (mahā-smṛti). Some writers[1687] quote the Vedic text 'whatever Manu said is indeed medicine' in this connection, thereby identifying the author of the Manusmṛti with the Manu named in the Vedas. But this does not afford much help. Another principle evolved was that certain rules of conduct and certain smṛtis were of special authority in certain cycles of time. Manu (I. 85-86 = Śānti 232. 27-28 = Parāśara I. 22-23

1685. यत्र विप्रतिपत्तिः स्याद्धर्मशास्त्रार्थशास्त्रयोः । अर्थशास्त्रोक्तमुत्सृज्य धर्मशास्त्रोक्तमाचरेत् ॥ नारद I. 39 ; मेधा. on मनु. VII, 1 says 'तथा च कात्यायनः । अर्थशास्त्रोक्त ... शास्त्रोक्तमाव्रजेत् । '.

1686. वेदार्थोपनिबद्ध(न्द्धृ ?)त्वात्प्राधान्यं हि मनोः स्मृतम् । मन्वर्थविपरीता तु या स्मृतिः सा न शस्यते ॥ तावच्छास्त्राणि शोभन्ते तर्कव्याकरणानि च । धर्मार्थमोक्षोपदेष्टा मनुर्यावन्न दृश्यते ॥ बृह. q. by कुल्लूक on मनु. I. 1. The first is q. by अपरार्क p. 628 and by स्मृतिच. I. p. 7 (reads वेदार्थोपनिबद्धत्वात्) ; यथाहाङ्गिराः । यत्पूर्वं मनुना प्रोक्तं धर्मशास्त्रमनुत्तमम् । न हि तत्समतिक्रम्य वचनं हितमात्मनः ॥ स्मृतिच. I. p. 7, स्मृतिमु. (वर्णाश्रम) p. 6.

1687. श्रुतिरपि यद्वै किं च मनुरवदत्तद्भेषजम् । स्मृतिमु. (वर्णाश्रम) p. 6. This text is in तै. सं. II. 2. 10. 2 and Kāṭhaka XI. 5 has almost the same words.

= Bṛhat-Parāśara I. p. 55) himself says that the dharmas differ according to which of the four yugas is current, viz. *tapas* is the highest dharma in the Kṛta age, knowledge in Tretā, *yajña* in Dvāpara and only *dāna* in Kali. This verse only means that in a particular yuga the predominant or easily performed dharma is the one indicated but the verse does not mean that a dharma predominant in one yuga was prohibited in another. Parāśara I. 24[1688] (= Bṛhat-Parāśara I. p. 55) declares that in the Kṛta age the dharmas (to be observed) were those promulgated by Manu, in Tretā those of Gautama, in Dvāpara those of Śaṅkha-Likhita and in Kali those of Parāśara. This also did not solve all difficulties, since the medieval digests and commentaries found that even what was allowed by Parāśara came to be disapproved of or condemned by the people. Many prescriptions of the smṛtis were therefore included under *Kali-varjya* (acts forbidden in the Kali age) on the ground that action, though at one time prescribed or sanctioned by the śāstra, should not be resorted to, if it has become hateful to the people, since it would not lead to heaven[1689] (if persisted in). This was the dictum of Yāj. I. 156 (= Bṛhan-Nāradīya-purāṇa 24. 12), Manu IV. 176, Viṣṇu Dh. S. (71. 84–85), the Viṣṇupurāṇa (III. 11. 7), Śukra III. 64, Bārhaspatya-sūtra (on Arthaśāstra) V. 16. Vide p. 630 and n. 1202 above. These texts were relied upon for prohibiting certain acts (though done in former times) by the Mit. (on Yāj. II. 117, III. 18), V. P. (p. 442) and others. But those devices of interpretation also proved futile in certain cases. On the question of the periods of mourning due to death for kṣatriyas and others the texts are so various and so conflicting that even the great Vijñāneśvara declares (on Yāj. III. 22) that he is not going to furnish any orderly presentation of the smṛti texts assigning to each its proper province, since it would be useless to do so in view of the fact that the usage of śiṣṭas did not agree with most of them[1690]. Viśvarūpa also (on Yāj. III. 30) is in the same predicament. The commentators (such as

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1688. कृते तु मानवो धर्मस्त्रेतायां गौतमः स्मृतः । द्वापरे शाङ्खलिखितः कलौ पाराशरः स्मृतः ॥ पराशर I. 24 q. by स्मृतिच. I. p. 11. This is ascribed to बृह. in the आचाररत्न p. 12 quoting from the परा. मा.

1689. परित्यजेदर्थकामौ धर्मपीडाकरौ नृप । धर्ममप्यसुखोदर्कं लोकविद्विष्टमेव च ॥ विष्णुपुराण III. 11. 7; धर्ममपि लोकविक्रुष्टं न कुर्यात् लोकविरुद्धं नाचरेत् । बार्हस्पत्य-सूत्र V. 16.

1690. इत्येवमनेकोऽशावच्चाशौचकल्पा दर्शिताः । तेषां लोके समाचाराभावान्नातीव व्यवस्थाप्रदर्शनमुपयोगीति नात्र व्यवस्था प्रदर्श्यते । मिता. on या. III. 22.

Mādhava in Par. M. on I. 1. p. 84) were aware that peopl e would not go in for religious practices that called for great effort and would seek for such rules as would be easy of observance.[1691]

In some cases it was provided that where there is a conflict among smṛtis the view of the majority should prevail. Gobhila-smṛti (III. 148-149) provides[1692] that where there is a conflict among passages (of smṛtis), authoritativeness rests with that view which is supported by a majority of the texts, but where two passages are of equal authority then reasoning has to be employed. The assumption or axiom was, according to Medhātithi[1693] (on Manu II. 29 and XI. 216), Mit. (on III. 325), Sm. C. (I. p. 5), Aparārka p. 1053, Madanapārijāta (pp. 11, 91) and others that all smṛtis form one śāstra, that if some smṛti texts on the same subject are in conflict there is an option and when there is no conflict all rules from all smṛtis should be held applicable to the subject matter; this was based on the analogy of the maxim called 'sarva-śākhāpratyayanyāya' or 'śākhāntarādhikaraṇa' (vide Jai. II. 4. 9 and Śabara thereon).

It is further provided that works of heretical sects were to be left out of consideration. Manu calls them smṛtis, but they are outside the pale of Vedic orthodoxy. Manu (XII. 95) declared,[1694] 'the smṛtis that are outside the (pale of) Veda and all false or fallacious doctrines are of no avail after death, because they are all based on ignorance'. In the Vedāntasūtra (II. 1. 1) also the word smṛti is applied to the works on the

1691. अतः कलौ प्राणिनां प्रयाससाध्ये धर्मे प्रवृत्त्यसम्भवात् सुकरो धर्मोऽत्र बुभुत्सितः । परा. मा. I, part 1 p. 84.

1692. अल्पानां यो विघातः स्यात्स बाधो बहुभिः स्मृतः । प्राणसंमित (प्राण?) इत्यादि वासिष्ठं बाधितं यथा ॥ विरोधो यत्र वाक्यानां प्रामाण्यं तत्र भूयसाम् । तुल्यप्रमाणकत्वे तु न्याय एवं(एव?) प्रकीर्तितः ॥ गोभिलस्मृति III. 148-149. प्राणसंमितो वैश्यस्य is वसिष्ठ XI. 57 (about the length of the staff of a vaiśya brahmacārin). The verse विरोधो यत्र is quoted (without name) in मलमासतत्त्व p. 767.

1693. यथा सर्वशाखाप्रत्ययमेकं कर्म एवं सर्वस्मृतिप्रत्ययमपि । यत्तु बहुत्वाद्गृह्यस्मृतीनां कार्श्यायतामित्यनध्यवसायः । सर्वासां प्रामाण्याविशेषादेकार्थानां विकल्पः भिन्नार्थानां समुच्चयः । मेधा. on मनु II. 29; एकशास्त्रत्वात्सर्वस्मृतीनामसति विरोधे समग्रं योऽयं विरोधे तु विकल्पः । मेधा. on मनु XI. 216; एवमन्येष्वपि विरोधिपदार्थेषु विकल्प आश्रयणीयः । अविरोधिषु समुच्चयः । शाखान्तराधिकरणन्यायेन सर्वस्मृतिप्रत्ययत्वात्कर्मणः । मिता. on या. III. 325.

1694. या वेदबाह्याः स्मृतयो याश्च काश्च कुदृष्टयः । सर्वास्ता निष्फलाः प्रेत्य तमोनिष्ठा हि ताः स्मृताः ॥ मनु XII. 95. This is quoted by the तन्त्रवार्तिक on जै. I. 3. 5 p. 196 with the remark 'एतदीया ग्रन्था एव च मन्वादिभिः परिहार्यत्वेनोक्ताः । या वेदबाह्याः...तमोनिष्ठा हि ताः स्मृताः इति । तस्माद्धर्मं प्रति त्रयीबाह्यमेवंजातीयकं प्रामाण्येनानपेक्ष्यं स्यादिति सिद्धम् ।'

Sāṅkhya philosophy. The Tantravārtika (p. 195) says that the Bauddhas and other heretical sects do not admit that their doctrines are based on the Veda, like a bad son hating his parents; the prescriptions contained in their works are opposed to all the 14 *vidyās* except in the case of a few sentences laying down restraint of senses, charity and the like; they were promulgated by persons like the Buddha who had given up the path of the Veda and did acts contrary to the Veda and they were propounded to persons that were beyond the pale of the three Vedas and that mostly were śūdras and persons outside the system of the four varṇas and āśramas. Medhātithi on Manu II. 6 adopts this and remarks[1695] that the Śākyas, Bhojakas and Kṣapaṇakas do not admit the Veda as authoritative, they openly declare the Veda to be unauthoritative and they teach doctrines directly opposed to the Veda. The Caturviṁśatimata[1696] states that the words of Arhat (Jina), of Cārvāka and of Bauddhas, should be abandoned as they lead to delusion.

Then comes the question of the conflict between smṛtis and purāṇas. It has been shown in the H. of Dh., vol. I pp. 160-167, how the Purāṇas are rich in Dharmaśāstra material. The sūtras and early smṛtis do not look upon the Purāṇas as a source of dharma, though Gaut. XI. 19 and Yāj. I. 3 mention Purāṇa as one of the classes of works on which the king or any one else may draw for knowledge of dharma and though the Āp. Dh. S. quotes from a Purāṇa in I. 6. 19. 13, I. 10. 29. 8 and II. 9. 23. 3 and names a Bhaviṣyatpurāṇa in II. 9. 24. 6. It is to be noted that the views quoted by Āp. from the Purāṇas in the first three passages are opposed to the views of the Kalivarjya section alleged to be taken from the Ādityapurāṇa in medieval digests. The passage of the Tantravārtika stating that Purāṇas, Manusmṛti and Itihāsa are universally accepted throughout India has been already quoted (on p. 853). When Manu states that smṛti is a source of dharma he does not obviously comprehend Purāṇas under smṛti as Manu II. 10 clearly shows (*dharmaśāstraṁ tu vai smṛtiḥ*). Manu III. 232 and Yāj. III. 189 employ the plural 'Purāṇāni' and so those smṛtis obviously

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1695. नहि शाक्यभोजकक्षपणकादीनां वेदसंयोगसंभवो येन तन्मूलतया स्वविषये प्रमाणं स्युः स्वयमनभ्युपगमात्तैश्च वेदस्याप्रामाण्याभिधानात् प्रत्यक्षवेदविरुद्धार्थोपदेशाच्च। मेधा. on मनु II. 6.

1696. अर्हच्चार्वाकवाक्यानि बौद्धादिपठितानि च। विप्रलम्भकवाक्यानि तानि सर्वाणि वर्जयेत्॥ चतुर्विंशतिमत (q. in स्मृतिमु., वर्णाश्रम, p. 7, स्मृतिच. I. p. 5).

knew several Purāṇas and Medhātithi notes that they were composed by Vyāsa and described the creation of the world &c. The Strīparva (13. 2) also employs the plural and the Svargārohaṇikaparva (5. 46–47) speaks of Kṛṣṇa Dvaipāyana as the author of 18 Purāṇas. The Ādiparva[1697] (1. 293–94) prescribes that one should strengthen the Veda by (the study of) the Itihāsa and Purāṇa and that the Veda fears the man whose knowledge is insignificant 'this man will harm me'. According to the Bhāgavata-purāṇa I. 4. 25 the purpose[1698] of the composition of the Mahābhārata was this that as the Veda cannot be learnt by women, śūdras and brāhmaṇas who are so only by birth (and do not study) the sage Vyāsa took compassion on them and composed the Mahābhārata for their benefit. The same must be deemed to be the purpose of the composition of the purāṇas. The Dakṣasmṛti II. 69 prescribes[1699] the recitation of itihāsa and purāṇa in the 6th and 7th parts of the day (divided into 8 parts). The Auśanasa smṛti (III. p. 515, Jivananda) prescribes the study of the Veda in the bright half of the months from Māgha after *utsarjana* and the study of the Vedāṅgas and of Purāṇa in the dark half. It appears that some at least of the extant Purāṇas were composed in the first centuries of the Christian era and that from early times they contained dharmaśāstra material. In another section the *paurāṇadharma* will be separately dealt with hereafter. Gradually the Purāṇas became very popular in the course of centuries, some of the original rites prescribed by the Veda and the early smṛtis went out of vogue and new modes of worship and rites provided by the Purāṇas came into general observance. The Vedavyāsa smṛti[1700] (I. 4) and the Saṅgraha state that in case of conflict between smṛti and purāṇa smṛti is to be

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1697. इतिहासपुराणाभ्यां वेदं समुपबृंहयेत् । बिभेत्यल्पश्रुताद्वेदो मामयं प्रहरिष्यति (v. l. प्रतारिष्यति) ॥ आदिपर्व 1. 293–294 (= बृहदत्रि chap. 3 p. 50, Jivananda, = वायुपुराण 1. 201, वसिष्ठ 27. 6). It is ascribed to बृहस्पति in the स्मृतिच. I. p. 3. लघुव्यास II. p. 320 (Jivananda) reads the first half as वेदार्थमुपबृंहयेत्.

1698. स्त्रीशूद्रद्विजबन्धूनां त्रयी न श्रुतिगोचरा । इति भारतमाख्यानं कृपया मुनिना कृतम् ॥ भागवत I. 4. 25; तेनोक्तं सात्वतं तन्त्रं यज्ज्ञात्वा मुक्तिभाग्भवेत् । यत्र स्त्रीशूद्रदासानां संस्कारो वैष्णवो मतः ॥ q. by the परिभाषाप्रकाश (p.24) from the भागवतपुराण.

1699. इतिहासपुराणाद्यैः षष्ठसप्तमकौ नयेत् । दक्ष II. 69 q. by अपरार्क p. 157.

1700. श्रुतिस्मृतिपुराणानां विरोधो यत्र दृश्यते । तत्र श्रौतं प्रमाणं स्यात् तयोर्द्वैधे स्मृतिर्वरा ॥ वेदव्यास I. 4; श्रुतिस्मृतिपुराणेषु विरुद्धेषु परस्परम् । पूर्वं पूर्वं बलीयः स्यादिति न्यायविदो विदुः ॥ संग्रह q. by स्मृतिच. (वर्णाश्रम) p. 7.

preferred. Aparārka (p. 9) quotes[1701] a smṛti text, 'that is highest dharma which is understood from the Veda, that is to be known as inferior dharma that is declared in the Purāṇas and the like'. Aparārka (p. 15) further tells us that[1702] according to the Bhaviṣyatpurāṇa the purāṇas are of authority in declaring dharma that is *vyāmiśra* (i. e. mixed up and not purely Vedic). Medieval writers were often divided as to the authoritativeness of purāṇas. Mitramiśra (in his commentary[1703] on Yāj. II. 21) asserts that dharmaśāstra (viz. smṛti) is not more authoritative than purāṇa and that in case of conflict between a smṛti text and a purāṇa text recourse must be had to reasoning as in the case of conflict between two smṛtis. On the other hand, the V. Mayūkha,[1704] after quoting Manu IX. 126 and Devala about the first born among twins being regarded as the oldest and after referring to a half verse from the Bhāgavatapurāṇa (rather from the commentary of Śrīdhara thereon) which holds that among twins the one born later is to be deemed as the elder, remarks that the Purāṇa passage is to be set aside in favour of the smṛti passages and that in the purāṇas usages opposed to the smṛtis are very frequently met with. It further says that this view is preferable to that of some others according to whom in this matter the custom of the country should be followed. The Nirṇayasindhu (III. p. 251) also says the same. The respect for the purāṇas carried away late medieval writers so far that relying on some prophetic passages in the purāṇas about the disappearance of four varṇas in the Kali age and the subsistence of only brāhmaṇas and śūdras therein, they denied the existence of kṣatriyas and vaiśyas in the Kali age, in spite of the fact that all smṛtis (like Manu, Yāj., Parāśara) and many commentaries (including the Mitākṣarā) hold that the four varṇas exist in the Kali age.

1701. अतः स परमो धर्मो यो वेदादधिगम्यते । अवरः स तु विज्ञेयो यः पुराणादिषु स्मृतः ॥ व्यास q. by अपरार्क p. 9, परिभाषाप्रकाश p. 29, कृत्यर. p. 39.

1702. एवं प्रतिष्ठायामपि पुराणाद्युक्तैवेतिकर्तव्यता ग्राह्या नान्या । तेषामेव व्यामिश्रधर्मप्रमाणत्वेन भविष्यत्पुराणे परिज्ञातत्वात् । अपरार्क p. 15.

1703. तेन पुराणाद्धर्मशास्त्रं स्मृत्यात्मकं न बलवत् । किं तु स्मृत्योरिव स्मृतिपुराणयोः परस्परविरोधे न्यायाद्बलाबलम् । मित्रमिश्र on या. II. 21; यत्र स्मृतिपुराणयोर्विरोधस्तत्र विकल्पः । संस्कारसार folio 14 a (part of नृसिंहप्रसाद).

1704. यत्तु द्वौ तदा भवतो गर्भौ सूतिवेशविपर्ययात्—इत्यादिना भागवते पश्चाज्जातस्य ज्यैष्ठ्यमुक्तं तदप्यनेन बाध्यते । पुराणेषु स्मृतिविरुद्धाचाराणां बहुशो दर्शनात् । देशाचारतो व्यवस्था ज्ञेयेति केचित् । युक्तं तु पूर्वोक्तमेव । व्य. मयूख pp. 97-98. Vide राजनीतिप्र. pp. 37-39 for a similar view.

Vide H. of Dh. vol. II pp. 380-382 about the existence of kṣatriyas in the Kali age.

The case of conflict between smṛti and customs has now to be considered. The general rule deduced from Vas. I. 5, Yāj. I. 7 and supported by the Mit. (on Yāj. I. 7 and II. 117), the Sm. C. (II. p. 266), Kullūka (on Manu. II. 10) and several others is that smtṛi is of superior authority to the usages of the śiṣṭas. But from early times there have been dissenting voices. Viśvarūpa on Yāj. III. 250 states that that purport of the smṛtis is to be followed which is in accordance with the settled practice of the śiṣṭas resident in Āryāvarta[1705]. On Manu IV. 176 Medhātithi points out that *niyoga* is permitted by such smṛtis[1706] as Gaut. 18. 4-14, Yāj. I. 68-69, Vas. 17. 56-65, but being condemned by the people it is not practised. Therefore the principle that may be deduced from these is that the prescriptions of smṛtis (and even of śruti) need not be observed and should not be observed when they are vehemently condemned by the people. The chapter on Kalivarjya will make this clear. Commentators like Medhātithi (on Manu II. 10) went so far as to say that Dharmaśāstra is that which prescribes what is to be done for attaining dharma, that is smṛti from which dharma which one performs as a duty is understood and therefore śiṣṭācāra[1707] also is smṛti. The smṛtis themselves embodied the practices of the people current in their days, as Manu I. 107 declares, 'in this work dharma has been fully stated as well as the good and evil qualities of (human) actions and the ancient customs and usages of the four varṇas.'[1708] Manu adds (I. 108), 'ācāra (customs and usages) are transcendental law, and so are the practices declared in the Veda and the smrti; therefore a twice-born person desirous of his own welfare should always

1705. लोकश्च शब्दार्थाधिगमहेतुरिति नातीव क्लेशनीयम् । यथैवार्यावर्तनिवासिशिष्टव्यवहारस्थितिस्तथैव स्मृत्यर्थोऽनुसर्तव्यो न तद्विपर्ययेण । विश्वरूप on या. III. 250.

1706. इदं तु स्फुटतरमुदाहरणम् । नियोगधर्मः स्मृत्या विहितो लोकसंकुष्टत्वान्न क्रियते । मेधा. on मनु IV. 176.

1707. इह सदाचारो न श्रुतिर्न स्मृतिर्निबन्धाभावात् । निबद्धाक्षरा हि स्मृतयः प्रसिद्धाः । अतस्तस्य स्मृतित्वमुपपादयति । यत्कार्यं धर्मप्राप्त्यर्थं तद्धर्मशास्त्रम् । यत्र धर्मः शिष्यते कर्तव्यतया प्रतीयते सा स्मृतिः । निबन्धानिबन्धावप्रयोजकौ शिष्टसमाचारादपि धर्मस्य कर्तव्यतावगतिः । सोऽपि स्मृतिरेव । मेधा. on मनु II. 10.

1708. अस्मिन्धर्मोऽखिलेनोक्तो गुणदोषौ च कर्मणाम् । चतुर्णामपि वर्णानामाचारश्चैव शाश्वतः ॥ मनु I. 107, on which मेधा. says 'शाश्वतो वृद्धपरम्परया नैवानीतः प्रवर्तितः'.

make efforts to follow it '.[1709] This has been the basic text in modern decisions that recognize the binding nature of customs. It is therefore necessary to understand the exact meaning of this verse. Two constructions are possible; (1) that the word ācāra is qualified by the words 'śrutyukta' and 'smārta' and that the first half declares that usages declared in the Veda or smṛti are transcendental law (this is the meaning given by most commentators of Manu); (2) that ācāra by itself and other rules of conduct declared in the śruti or smṛti are transcendental (i. e. here in the first half of the verse there is a reference to three kinds of ācāras, as Govindarāja and Nandana explain). If we look to the preceding verse and the following verses (that eulogise ācāra) the 2nd construction looks more natural and has been accepted by the decided cases when[1710] they lay down that 'immemorial usage is transcendental law' (Sir William Jones' translation of Manu I. 108) and that "under the Hindu system of law clear proof of usage will outweigh the written text of the law". The Anuśāsana (141. 65) and Śānti 354. 6 expressly state that dharma is threefold viz. that declared in the Veda, that declared in the smṛtis and the third is what is practised by śiṣṭas. Sumantu[1711] emphatically declares that family usage should be preferred to the prescriptions of śāstra. The Kūrmapurāṇa[1712] (Uttarārdha 15. 19) appears to support the 2nd interpretation when it says, 'one should observe that ācāra which is declared by the śruti and smṛti and which is rightly followed by the good'. The exact import of the word ācāra (or sadācāra) has been shifting from age to age and among commentators. In the earliest days, as shown by the Tai. Up., Gaut. (28. 48, 51), Baud. Dh. S. I. 1. 4-9, Manu XII. 108-109,

1709. आचारः परमो धर्मः श्रुत्युक्तः स्मार्त एव च । तस्मादस्मिन् सदा युक्तो नित्यं स्यादात्मवान् द्विजः ॥ मनु I. 108; 'यः श्रुत्युक्त आचारः पुरुषसाधारणप्राधान्यख्यापनार्थं च धर्मत्वेन यश्च स्मार्तः स परमः प्रकृष्टो धर्मः परमो ज्योतिष्टोमाष्टकादिभ्यः श्रौतस्मार्तधर्मेभ्यः' गोविन्दराज; 'श्रुत्युक्तोऽग्निहोत्रहोमादिः स्मार्तोऽष्टकादिः । अस्मिन् त्रये' नन्दन; compare अनुशासन 141. 65 वेदोक्तः परमो धर्मः स्मृतिशास्त्रगतोऽपरः । शिष्टाचीर्णः परः प्रोक्तस्त्रयो धर्माः सनातनाः ॥ and शान्ति 259. 3 सदाचारः स्मृतिर्वेदास्त्रिविधं धर्मलक्षणम् ।

1710. Vide *Collector of Madura v. Mootoo Ramlinga* 12 Moo. I. A. 397 at p. 436, *Bhyah Ram Singh v. Bhyah Ugur Singh* 13 Moo. I. A. 373 at p. 390.

1711. तस्मिन् कुलक्रमायातमाचारं त्वाचरेद् बुधः । स गरीयान् महाबाहो सर्वशास्त्रोदितादपि । सुमन्तु q. by स्मृतिच. (वर्णाश्रम) p. 7.

1712. श्रुतिस्मृत्युदितः सम्यक् साधुभिर्यश्च सेवितः । समाचारं निषेवेत नेहेतान्यत्र कर्हिचित् ॥ (कूर्म, उत्तरार्ध 15. 19).

Vas. I. 6, the ācāra to be followed was that observed or declared by learned brāhmaṇas who were highly moral and selfless (the śiṣṭas). Medhātithi on Manu II. 6 states that binding ācāra is that of śiṣṭas learned in the Vedas. Gradually every usage that had no visible secular purpose came to be looked upon as binding and lastly the usages of śūdras, of *pratiloma* castes and even of heterodox sects became, as will be shown in the sequel, enforceable by the king. As observed in 39 Mad. 298, 301 the commentaries indicate an attempt to reconcile the text law with the actual usages of the people.

The requisites of valid customs, according to the smṛtis and commentaries and digests, are similar to those laid down by the writers on Pūrvamīmāṁsā i. e. they must be ancient, must not be opposed to śruti and smṛti, must be such that they are regarded by respectable people as obligatory on them and such as are observed with that consciousness by the śiṣṭas, they must be strictly construed and cannot be availed of by others not within their purview and must not be immoral or severely condemned by popular sentiment. Customs once in vogue may be abandoned by the people as the chapter on Kalivarjya will show.

From Gaut., Manu, Bṛ., Kāt. and other writers quoted above it follows that the customs and usages of which account has to be taken are those of districts (deśa or janapada), towns and villages, castes, families, guilds or corporations or groups (gaṇa, śreṇi, saṅgha, naigama, varga). A few words on each of these and on usages of *gotras* and *śākhās* will be said later on and a few illustrations of each will be given. But first of all certain preliminary observations have to be made about customs in general. The medieval writers on Dharmaśāstra make it clear that customs that depart from the generally received smṛti prescriptions must be strictly construed and that they cannot be extended on the ground of analogy to other matters outside the specific acknowledged customs. For example, both the Sm. C. (I. 71) and the Smṛtimuktāphala[1713] (on Varṇāśrama p. 31) say that, though one's maternal uncle's daughter can be married (by custom) yet one's mother's sister or mother's sister's daughter

1713. अतो ब्राह्मादिविवाहेषु निवृत्तसापिण्ड्यभावाया मातुरसापिण्ड्यत्वान्मातुलसुता परिणेया। एवं पैतृष्वसेय्यपि। न च तथाविधा मातृष्वसा तद्दुहिता च किमिति न परिणेयेति वाच्यम्। शास्त्राविरोधेपि लोकविरुद्धत्वाद्धर्म्यमपि लोकविद्विष्टं तन्नानुष्ठेयम्। तदुक्तं मनुना 'अस्वर्ग्यं ... चरेन्न तु इति। स्मृतिमु. (वर्णाश्रम p. 131). Vide H. Dh. vol. II. p. 467 *n*. 1096 *for the passage of the Sm. C. almost in the same words.*

cannot be married, because popular sentiment is opposed to the latter kind of marriages and popular sentiment has to be respected as Manu declares (in IV. 176). Similarly the Saṁskārakaustubha[1714] and the Dharmasindhu provide that where there is a local or family usage for narrowing down the limits of sapiṇḍa relationship in marriage, only those who belong to that locality or family can avail themselves of such narrowing down, but if a person in a different locality or belonging to a different family were to follow the practice of narrowing down the sapiṇḍa relationship, he would incur blame. Owing to the vastness of Bharatavarṣa it was recognised that what was sadācāra in one country would not be so in another, as is noted by the Par. M. (I. 2. p. 65) in relation to marriage with one's maternal uncle's daughter.[1715]

A few words may now be said about customs of countries. That usages about details of ritual varied a great deal even in the Vedic times is quite clear. The Śat. Br. (I. 1. 4. 13) notes that in former times it was the wife of the sacrificer that rose at the Haviṣkṛt call, but that in its own day the wife or a priest (the Āgnīdhra) rises in answer to the call. Vide H. of Dh. vol. II. p. 1027 and n. 2311 on the Haviṣkṛt call. For similar differences in practices vide the same Brāhmaṇa XII. 3. 5. 1 and XII. 6. 1. 41. The Ait. Br. frequently refers to one view and refutes it by saying that one should not do so (*tat tathā na kuryāt*) or one should discard it (*tat tat nādṛtyam*) e. g. vide chap. 12. 7, 17. 1, 18. 8, 28. 1, 29. 5. Vide also Tai. Br. I. 1. 8, I. 3. 1, III. 8. 8 for similar words. That different districts had different customs about marriages and other matters even before the times of the gṛhyasūtras and dharmasūtras has been

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1714. Vide H. of Dh. vol. II. p. 465 *n.* 1093d for the quotation from the Dharmasindhu. The सं. कौ. p. 613 remarks 'यस्तु देशानुरूपेण कुलमार्गेण चोद्वहेत् । नित्यं स व्यवहार्यः स्यात्तद्वाच्यैतत्प्रतीयते ॥ इति चतुर्विंशतिमताच्च । तृतीयां मातुः कन्यां तृतीयां पितुस्तथा । विवाहयेन्मनुः प्राह पाराशर्योऽङ्गिरा यमः ॥ इति चन्द्रिकापारिजातोदाहृतषट्त्रिंशन्मताच्च ' । and adds (p. 620) अतः सिद्धमेतत् । कलावपि येषां कुले देशेऽनुकल्पत्वेन सापिण्ड्यसङ्कोचः परम्परया समागतः तेषां तादृशसङ्कोचेन न दोषः; अस्ति च भार्यात्वोत्पत्तिः । अन्येषां तैः सह व्यवहारे नैव दोषः । स्वयं तु कुलदेशविरुद्धसापिण्ड्यसंकोचेन विवाहे भवत्येव दोषः ।. The two verses यस्तु देशा॰ and तृतीयां are quoted by the वैजयन्ती on विष्णुधर्मसूत्र 24. 10.

1715. यद्यपि मातुलसुतापरिणयनमुदीच्यशिष्टगर्हितं तथापि दाक्षिणात्यशिष्टैराचरितत्वेन नाविगीतोयमुदीच्यानामाचारः । न च दाक्षिणात्यानां रागमूलत्वं शङ्कनीयं विधिनिषेधपरीक्षकैरेव तद्विवाहकरणात् । मातृष्वसृसुताविवाहस्तु अविगीतेन शिष्टाचारेण वर्जितः । परा. मा. I. part 2 p. 65.

noted above (pp. 856–857). Baudhāyana made a distinction about the customs of the northern and southern people (countries). That customs of the northern and southern countries differed is emphasized by many commentators and writers of digests. For example, the Mit. on Yāj. I. 256 refers to the differing views of dākṣiṇātyas and udīcyas on Ekoddiṣṭa-śrāddha. Śaṅkarabhaṭṭa in the introductory verses of the Dvaitanirṇaya (or Dharma-dvaita-) expressly states that he will furnish solutions of knotty points in Dharmaśāstra after abiding by the views of southern writers.[1716] The Nirṇayasindhu in its section on sāpiṇḍya speaks of Śūlapāṇi, Vācaspati and Śuddhiviveka as Gauḍas and Maithilas, and points out that Śūlapāṇi in the Sambandhaviveka and the Sambandhatattva (a Gauḍa work) allow marriage with a girl separated by three gotras from the bridegroom, while the southern writers (dākṣiṇātyas) do not accept the view. But in those days there were no rigid territorial boundaries for certain practices or doctrines. For example, Vijñāneśvara, Madana-ratna, Pārijāta, Vācaspati and Śūlapāṇi accepted the view that sāpiṇḍya arises from community of the particles of the body, while Aparārka, Smṛticandrikā and Mādhava (though they were southern writers like Vijñāneśvara) held that sāpiṇḍya was based on the offering of piṇḍa in śrāddhas. The fashion of dividing Hindu works into schools and assigning them definite territorial limits started with Colebrooke and has been perpetuated by decisions of the Privy Council and of the Indian High courts. Vide *Collector of Madura v. Mootoo* 12 Mad. I. A. 397 at p. 432 (for reference to Colebrooke), p. 435 (as to how schools arose), pp. 436–437 (as to different schools). Strange results have flowed from this. The Vyavahāramayūkha, written by Nīlakaṇṭha, whose family belonged to Paiṭhan in Mahārāṣṭra and migrated to Benares and who himself wrote under the patronage of a Bundella chief, came to be regarded as a work of the highest authority in Gujerat and North Konkan (even superseding the Mitākṣarā), while in Mahārāṣṭra proper its authority is subordinate to that of the Mitākṣarā. The Mit. (on Yāj. II. 119) avers that in the section on the partition of heritage the texts generally repeat what is

1716. मीमांसाद्वैतसाम्राज्यनीतिज्ञो भट्टशङ्करः । ... गुरोश्च त्रिस्थलीसेतुकर्तुर्ज्ञात्वा मतानि तु । दाक्षिणात्यमते स्थित्वा धर्मद्वैतेषु निर्णयम् । तनुते सोऽविवादेन नापमान्यः कथंचन ॥ धर्मद्वैतनिर्णय Intro. verses 5–8.

already current among the people[1717] and that if Yāj. II. 118–119 were interpreted to mean that the words 'what is acquired at the cost of paternal estate by a person himself' stand by themselves and do not qualify the other clauses, then what is acquired through friendship even at the cost of the paternal estate would not be liable to partition, which would be opposed to the practice among people. The Vyavahāra-mayūkha also[1718] says on Manu IX. 210 (about reunion) that the law and administration of justice are generally based as is the case with grammar on people's usages. The Vīramitrodaya also states that all writers of digests are agreed that smṛtis on Vyavāhara generally re-iterate recognized popular usages.

Customs of countries and families have been specially recognized from very ancient times in the sphere of marriage. The Āśv. gṛ. (I. 7. 1–2) has been already cited above (p. 856). The commentators on Āśv. gṛ., Haradatta and Nārāyaṇa, both mention that in certain countries sexual intercourse is commenced immediately after marriage, that this practice is opposed to the rule in Āśv. gṛ. I. 1. 10 that the married couple should be celibate after marriage for at least three nights (if not for a longer period) and that one should follow the rule laid down in the gṛhyaśūtra and not the usage of the country. The Āp. gṛ. (II. 15) remarks,[1719] 'people should understand from women (and others) what procedure is (to be followed according to the custom of the country)' and the commentator Sudarśanācārya notes that certain rites like the worship of planets, *aṅkurāropaṇa* and the tying of *pratisara* (a string or ribbon tied round the wrist) are usual and are performed with Vedic Mantras. The Kāṭhakagṛhya (25. 7) allows the usages of countries and families to be observed in marriage and the

1717. नह्यत्र मासस्य प्रतिषेधः किन्तु सिद्धस्यानुवादोयम् । लोकसिद्धस्यैवानुवादकान्येव प्रायेणास्मिन्प्रकरणे वचनानि । मिता. on या II. 119. Vide note 1091 above about partition of what is obtained through friendship, प्रायेण व्यवहारस्मृतीनां लोकसिद्धार्थानुवादकत्वमिति सकलनिबन्धृभिरभिधानात् । व्य. प्र. p. 420.

1718. तेनाचारमूलकत्वेस्य वचसः सम्भवति तद्विरुद्धश्रुतिकल्पनमन्याय्यम् । व्यवहारशास्त्रस्य व्याकरणवत्प्रायेणाचारमूलकत्वाच्चेति तु परे । व्य. मयूख p. 146.

1719. आवृतश्चा स्त्रीभ्यः प्रतीयेरन् । आप. गृ. II. 15 ; मन्त्ररहिताः क्रियाः आवृत उच्यन्ते । हरदत्त, आ स्त्रीभ्यः सर्ववर्णेभ्यः सकाशात् अवगम्य प्रतीयेरन् कुर्वीरन् विवोढारः । तत्र समन्त्रका ग्रहपूजाङ्कुरारोपणप्रतिसरबन्धाद्या आचारसिद्धाः । अमन्त्रका नागबलियक्षबलीन्द्राणीपूजादयः । ताश्च यथाजनपदं यथावर्णं यथाकुलं यथास्त्रीपुंसं व्यवस्थिता एव । न तु सर्वाः सर्वत्र समुच्चिताः । तात्पर्यदर्शन.

commentators mention some usages, viz. Devapāla refers to stating the purpose of the visit, announcing the name of the maiden, worship of family deity, striking with flowers and creepers. The com. Brāhmaṇabala states that in Kashmir at the time of marriage the mother-in-law or some other woman whose husband is alive ties an auspicious wreath on the heads of the bride and the bridegroom, that the mother-in-law places flowers on the feet, knees, shoulders and head of the bridegroom and on the same seven places of the bride's body flowers are placed but in the reverse order (i. e. first on the left limb and then on the right).

Haradatta on Gaut. XI. 20 (cited above in n. 1662) mentions the following usages: in the Cola country while the sun is in the zodiacal sign of Aries maidens draw with powders of various colours on the ground an orb of the sun together with attendants and offer worship in the morning and evening; on the full moon day of Mārgaśīrṣa maidens putting on ornaments walk about in the village and offer to a temple idol whatever they get in their wanderings; when the sun is in the sign of the Crab, maidens worship the goddess Umā while the moon is in the constellation of the Pūrvā Phalgunīs and offer to the gods *mudga* beans that have put forth sprouts and salt; when the sun is in the sign of Pisces, house-holders worship the Goddess of wealth while the moon is in the constellation of Uttarā Phalgunī. Āp. Dh. S. II. 6. 13. 7 notes that in certain countries the special portions of the eldest son in paternal wealth are gold, dark-coloured cattle and black-coloured produce of the soil (i. e. black grain). Vide Bṛ. and Tantravārtika quoted above (as to customs of certain countries).

Several such illustrations may be furnished from other writers, but considerations of space make it necessary to omit reference to them.

The Pār. gṛ. S. I. 8 states[1720] that the usages of villages may be followed, since a text says 'one should enter a village (i. e. follow the opinion of village elders) in case of marriage and funeral rites' and since the Veda says that 'the village is the authority in these two.'

1720. ग्रामवचनं च कुर्युर्विवाहश्मशानयोर्ग्रामं प्रविशतादिति वचनात्तस्मात्तयोर्ग्रामः प्रमाणमिति श्रुतेः । पार. गृ. सू. I. 8.

Numerous caste customs have been recognized from ancient times to these days. Gaut. XI. 20, Vas. I. 17, Manu I. 118, VIII. 41 and 46, Kauṭ. III. 7, Śukra IV. 5. 47 emphasize the validity of caste customs and call upon the king to enforce them. Yāj. I. 361 advises the king to punish those who swerve from the usages of their family, caste, guild, or group. Kātyāyana (40) enjoins[1721] that the king should not disregard the fixed usages even of *pratiloma* castes and of the inhabitants of inaccessible places (mountain forts or habitations), even if they be opposed (to the rules of smṛtis). In the Paribhāṣāprakāśa Mitramiśra holds[1722] that the usages of good śūdras free from moral defects are binding on their sons and others even though they do not know the Veda.

Compared to Western Christian countries very great religious tolerance prevailed in ancient India. Vide H. of Dh. vol. II. pp. 388 (n. 928 a), 723–724 for some remarks on this. Aśoka in his Pillar Edict VII (E. I. vol. II. p. 272) says that he looked after saṅghas, brāhmaṇas, Ājīvakas and all other sects (pāṣaṇḍa). The Bhagavadgītā (IX. 23–25) proclaims that the devotees that worship other gods do worship Kṛṣṇa himself though in an irregular way and that those who offer worship to the Manes or to the elements reach the goals they desire. The Mānasollāsa enjoins[1723] that one should give up condemnation of or hatred towards other gods, that one should show reverence on seeing an image or a temple and should not pass it over (in contempt). People of different countries no doubt twitted each other on the customs and usages peculiar to each; but it rarely went beyond the bandying of words. For example, even such a

1721. प्रतिलोमप्रसूतेषु तथा दुर्गनिवासिषु । विरुद्धं नियतं प्राहुस्तं धर्मं न विचालयेत् ॥ कात्या. q. by व्य. प्र. p. 89. The व्य. नि. p. 16 reads प्रातिलोम्ये प्रसूतानां ... निवासिनाम् । वर्णानां नियतं धर्मं न्यायोपेतं न चालयेत् ॥. Acc. to the Vyavahāra-Kalpataru, बृह. read the verse as 'प्रतिलोमप्रसूतानां ... निवासिनाम् । शास्त्रवद् यत्नतो रक्ष्या सन्धिग्धौ साधनं तु सा' (quoted in 'Rājadharma' p. 155 by Prof. K. V. Rangaswami Aiyyangar).

1722. अथवा आचारश्चैव साधूनामिति, श्लोक: । एवं चावेदविदामपि क्षीणदोषपुरुषाणामाचारः प्रमाणम् । तथा च सच्छूद्राणामाचारस्तत्पुत्रादीन्प्रति भवति प्रमाणम् । परिभाषाप्रकाश p. 9.

1723. अन्येषामपि देवानां निन्दां द्वेषं च वर्जयेत् । देवं देवकुलं दृष्ट्वा नमस्कुर्यान्न लङ्घयेत् ॥ मानसोल्लास, verse 105 p. 11.

philosophical work as the Jīvanmuktiviveka remarks[1724] that brāhmaṇas of the south condemn even the learned brāhmaṇas of the north as flesheaters and brāhmaṇas of the north condemn southern brāhmaṇas because they marry their maternal uncle's daughters and because they carry earthen vessels in fairs or on pilgrimages. It was on account of the general attitude of religious tolerance that the smṛtis and digests prescribe that even the usages of heretical sects should be enforced by the king. Yāj. II. 192 prescribes[1725] that the king should guard against breach of the distinctive usages and conventions of guilds (of artisans), of traders, of heretical sects and bands (of soldiers). Nārada (samayasyānapākarma 1–3) states[1726] that the king should uphold the conventions of heretical sects, of traders, guilds and other groups and that whatever traditional usages, activities, mode of attendance and means of maintenance were peculiar to them should be permitted to them by the king without introducing any change. Among the matters of which the king was to take cognizance *suo motu* and included under prakīrṇaka by Nārada (verse 2) was the transgression of the usages of heretics, traders, guilds and gaṇas. Bṛhaspati provides[1727] that in disputes among husbandmen, artisans, wrestlers, money-lenders, guilds, dancers, heretics, thieves, a decision is to be given in accordance with their conventions. It is no doubt true that certain smṛtis present a sterner treatment of heretics and

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1724. तथाहि देशविशेषेण परस्परं निन्दाबाहुल्यमुपलभ्यते। दाक्षिणात्यैर्विप्रैरौत्तराहा वेदविदो विप्रा मांसभक्षिणो निन्द्यन्ते । औत्तराहैश्च मातुलसुतोद्वाहिनो यात्रासु मृद्भाण्डवाहिनो दाक्षिणात्या निन्द्यन्ते । बह्वृचा आश्वलायनशाखां काण्वशाखायाः प्रशस्तां मन्यन्ते वाजसनेयिनस्तु वैपरीत्येन। जीवन्मुक्तिविवेक (वासनाक्षयप्रकरण) p. 54.

1725. श्रेणिनैगमपाखण्डिगणानामप्ययं विधिः। भेदं चैषां नृपो रक्षेत्पूर्ववृत्तिं च पालयेत् ॥ या. II. 192 ; नैगमाः ये वेदस्याप्तप्रणीतत्वेन प्रामाण्यमिच्छन्ति पाशुपतादयः । पाखण्डिनो ये वेदस्य प्रामाण्यमेव नेच्छन्ति नग्नाः सौगतादयः । ... एतेषां च श्रेण्यादीनां भेदं धर्मव्यवस्थानं नृपो रक्षेत् । मिता०; the दीपकलिका explains 'नैगमौ वणिगादिर्नानापौरसमूहः । पाषण्डः प्रव्रज्यावसितः'. कात्यायन defines नैगम as 'नानापौरसमूहस्तु नैगमाख्यः प्रकीर्तितः' and the षट्त्रिंशन्मत defines पाषण्ड as 'प्रामाण्यमेव ये वेदे न मन्यन्ते कुहेतवः। तेषां बौद्धार्हतादीनां पाषण्डाख्या प्रकीर्त्यते। प्रव्रज्यावसिता ये तु पाषण्डाख्याः प्रकीर्तिताः। (q. by व्य. नि. p. 13); vide अपरार्क pp 171–72 for quotations from विष्णुधर्मोत्तर and विष्णुपुराण about पाषण्डिन्.

1726. पाषण्डनैगमादीनां स्थितिः समय उच्यते। पाषण्डिनैगमश्रेणिपूगव्रातगणादिषु। संरक्षेत्समयं राजा दुर्गे जनपदे तथा । यो धर्मः कर्म यच्चैषामुपस्थानविधिश्च यः । यच्चैषां वृत्त्युपादानमनुमन्येत तत्तथा ॥ नारद (समयस्यानपाकर्म 1–3) q. by वि. र. p. 180.

1727. कीनाशाः कारुका मल्लाः कुसीदश्रेणिनर्तकाः। लिङ्गिनस्तस्कराश्चैव स्वेन धर्मेण निर्णयः ॥ बृह. q. by व्यव. मा. p. 281, व्य. नि. p. 11, व्य. प्र. p. 23 (which reads कारुकाः शिल्पिकुसीदि°).

the like. Gaut. IX. 17 provides[1728] that a snātaka should not talk with *mlecchas*, impure persons and sinners. Manu IX. 225 prescribes that the king should banish from his capital gamblers, dancers, heretics, vintners &c. Manu IV. 30 holds that one should not honour as guests even by words persons who are heretics, rogues &c. and recommends that one should not reside in a country which is overrun by groups of heretics. Yāj. II. 70 and Nār. (ṛṇādāna 180) say that a heretic (pākhaṇḍi) or an atheist is not a proper witness. These passages may be explained in various ways. Probably the prescriptions of Gautama and Manu refer to an age when the schism caused by Buddhists and Jainas was not very old and feelings between the followers of the Veda and the heretics ran high. But most of these prescriptions are addressed to the followers of the Veda as individuals. They do not negative the requirements laid down by Nār., Bṛ. and others that the king (though of a different persuasion) was to enforce among heretics their own usages. It can be said without any fear of contradiction that at least from the 4th century A. D. onwards the policy of the State in India was 'to *protect* all religions, but to interfere with none'.[1729]

Customs of families will be briefly referred to later on in connection with modern law cases. Among family customs the customs about the year when *caula* was performed and the locks of hair kept on the head in the caula ceremony are frequently mentioned in the gṛhya sūtras and other works. Vide H. of Dh. vol. II pp. 260 and 265.

The digests contain numerous examples about the customs and usages that were adhered to among the followers of the several Vedic branches (śākhās) and the gṛhya sūtras in performing several religious rites. A few examples may be set out here by way of illustration. According to Yāj. I. 242 the offering of *piṇḍas* to the *pitṛs* in a śrāddha takes place after the brāhmaṇas invited at the śrāddha are fed, while Manu III. 261 shows that they were offered also before the brāhmaṇas were fed. The Sm. C. (on śrāddha p. 471) says that one should follow the practice of one's own Vedic śākhā. Among the five daily sacrifices (*mahāyajñas*) one is pitṛyajña, which acc. to some (such as Kātyāyana) means tarpaṇa, while according to Manu

1728. न म्लेच्छाशुच्यधार्मिकैः सह सम्भाषेत । गौ. IX. 17.

1729. Vide *Vasudev v. Vamnaji* 5 Bom. 80 at p. 82 where Melvill J. states that this is the policy of the British Courts in modern India.

III. 81 it means śrāddha and the Sm. C. (I. p. 208) provides that one should follow one's śākhā. The same remark applies to the number of handfuls of water offered in *tarpaṇa* (Sm. C. I. p. 191 and Madanapārijāta p. 286). About the month of pregnancy in which the ceremony of sīmantonnayana was to be performed each person was to follow his own gṛhyasūtra (Sm. C. I. p. 17, and Par. M. I. part 2 p. 22). The same holds good as to the day of nāmakaraṇa (Sm. C. I. p. 21, Par. M. I. part 2 p. 25). It is not necessary to multiply examples. According to Gaut. XI. 21-22 and others already cited above, the king has to enforce the usages of guilds (śreṇi) and corporations. Several such usages have been cited above (pp. 487-488).

CHAPTER XXXIV

KALIVARJYA

(ACTIONS FORBIDDEN IN THE KALI AGE.)

It has been stated above (pp. 865-866) that one of the several ways in which the conflict between several smṛti texts was got over was to hold some of them as legislating for a bygone age (yugāntara). For example, when Hārīta allowed upanayana to women, both the Sm. C. (I. 24) and Par. M. (I. 2. p. 83) hold that the text refers to another *kalpa* (aeon). In H. of Dh. vol. II. (on pp. 151, 162, 424, 451, 603, 612, 620, 750, 790, 796, 928, 929, 934, 953, 1005 n, 1201 n) reference has been made to several matters forbidden in the Kali age. It is remarkable in this connection to note that, though the Parāśarasmṛti (in I. 24) claims *par excellence* to lay down the dharmas for the Kali age, several important provisions contained in it, viz. the remarriage of a married woman[1730] (Parāśara IV. 30), the variation in the period of impurity due to births and deaths depending on the learning and character of a brāhmaṇa (Parāśara III. 5-6), permission for a brāhmaṇa to partake of the food of five classes among śūdras (XI. 21) are included among Kalivarjyas by the Ādityapurāṇa (as quoted by writers of the 12th and later centuries). It is necessary, therefore, to investigate into the origin and development of the Yuga theory and of the topic of Kalivarjya.

From the Mahābhārata (Śānti 59), Manu (I. 81), Nārada (I. 1-2), Bṛhaspati and the Purāṇas it is clear that they all believed in the existence of an ideally perfect community in the dim past followed by gradual degeneracy and decline in morals, health and length of life. But they also believed that a cycle of decline would be followed in the far distant future

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1730. Some of the printed editions of Parāśara (IV. 30) read नष्टे मृते ... पतितेऽन्यो न विद्यते. But the Par. M. on it (vol. II part 1 p. 53) makes it clear that this reading was fabricated by orthodox people and that Mādhava at least read it as पतितेऽन्यो विधीयते, as he remarks 'अयं च पुनरुद्वाहो युगान्तरविषयः'.

by another of moral perfection. The only pity is that all works that are extant think that they are in the midst of a very sinful age and there is not a single work which thinks that the era of perfection may dawn in the very near future.

The germ of the theory of progressive deterioration in morals is found even in the Ṛgveda. In the famous dialogue of Yama and Yamī the former exclaims in one place[1731] (Ṛg. X. 10. 10) 'those later ages are yet to come when sisters would do what is not sister-like'. The word 'yuga' occurs at least 33 times in the Ṛg., but the exact meaning is somewhat doubtful. In a few places it means 'yoke' (Ṛg. X. 60. 8, X. 101. 3 and 4). In several places it appears to stand for a very brief period of time (e. g. Ṛg. III. 26. 3). Generally it means 'a generation' (as in Ṛg. I. 92. 11, I. 103. 4, I. 124. 2, II. 2. 2, III. 33. 8, V. 52. 4). In Ṛg. I. 158. 6 'dīrghatamā māmateyo jujurvān daśame yuge' *yuga* probably means 'a period of four or five years', while in Ṛg. VI. 15. 8, VI. 8. 5, X. 72. 2, X. 94. 12, X. 97. 1 it should mean[1732] 'a long period of time'. In the Atharvaveda VIII. 2. 21 yuga appears to mean a period of several thousand years, two yugas being indicated as longer than 10000 years (*śatam te'yutam hāyanān dve yuge trīṇi catvāri kṛṇmaḥ*). Here there is a clear reference to four yugas and to the fact that yuga meant a very long period of time. Whatever be the meaning of the word in each passage, the Ṛgveda does not contain the names of all the four well-known yugas viz. Kṛta, Tretā, Dvāpara and Kali. The word 'Kṛta' when used in the Ṛgveda appears to mean 'the best throw of dice or of the seeds of vibhītaka in gambling' (X. 34. 6, X. 43. 5). In the Atharvaveda VII. 52. 2, 5, 6 kṛta has the same meaning. Kali is the name of the author of Ṛg. VIII. 66 and in verse 15

1731. आ घा ता गच्छानुत्तरा युगानि यत्र जामयः कृणवन्नजामि। ऋ. X. 10. 10. The Nirukta (IV. 20) understood this verse in the sense given above 'आगमिष्यन्ति तानि उत्तराणि युगानि यत्र जामयः करिष्यन्ति अजामिकर्माणि'. Ṛg. I. 113. 13 and III. 33. 8 make it clear that उत्तर must mean 'future'. शश्वत्पुरोषा व्युवास देव्यथो अद्येदं व्यावो मघोनी। अथो व्युच्छादुत्तराँ अनु द्यूनजरामृता चरति स्वधाभिः॥ ऋ. I. 113. 13. Here the occurrence and sequence of पुरा, अद्य and उत्तरान् leave no doubt about the meaning of the last word.

1732. या ओषधीः पूर्वा जाता देवेभ्यस्त्रियुगं पुरा। ऋ. X. 97. 1. Here what is meant by त्रियुगं is doubtful. The निरुक्त IX. 28 explains देवेभ्यस्त्रीणि युगानि पुरा, while सायण says कृतादित्रियुगत्रयम्. In the शतपथ VII. 2. 4. 26 त्रियुगं means 'three seasons of spring, rains and autumn' (S. B. E. vol. 41 pp. 339-340).

of that hymn we read 'kalayo mā bibhītana' (O descendants of Kali! do not be afraid). In Ṛg. X. 39, 8 the Aśvins are said to have rejuvenated Kali who had become old. Vide also Ṛg. I. 112. 15 (where Kali is said to have got a wife from Aśvins). But Kali as a throw of dice does not occur in the Ṛgveda. In the Atharvaveda VII. 114. 1 Kali[1733] means a throw of dice. The words *kṛta*, *tretā*, *dvāpara* and *āskanda* occur in the Tai. S. IV. 3. 3, Vāj. S. 30. 18[1734] and in the Śat. Br. XIII. 6. 2. 9–10 (S. B. E. vol. 44 p. 416). In later literature Kali is also called Tiṣya (as in Bhīṣmaparva 10. 3). In the Tai. Br. III. 4. 16 the word Kali is used[1735] in place of Āskanda. In all the above places Kṛta and the other three words denote throws in gambling, Kṛta being the most lucky and Kali being the most unlucky. In another passage of the Tai.[1736] Br. (I. 5. 11) we read 'the four stomas (Trivṛt, Pañcadaśa, Saptadaśa and Ekaviṁśa) are Kṛta and the five are Kali; therefore the *catuṣṭoma* (should be performed in the Jyotiṣṭoma)'. This shows that Kṛta meant a throw of four or any multiple of four and Kali a throw which when divided by four left one as remainder. The Aitareya Br. employs the words Kṛta[1737] and the other three in a metaphorical sense as representing progressively more desirable states of human activity, 'one lying down becomes Kali, when about to leave the bed he becomes Dvāpara, when rising he becomes Tretā, and when he moves about he

1733. इदमुग्राय बभ्रवे नमो यो अक्षेषु तनूवशी। घृतेन कलिं शिक्षामि स नो मृडातीदृशे॥ अथर्व VII. 114. 1.

1734. अक्षराजाय कितवं कृतायादिनवदर्शं त्रेतायै कल्पिनं द्वापरायाधिकल्पिनमास्कन्दाय सभास्थाणुम्। वाज. सं. 30. 18.

1735. कृताय सभाविनं त्रेताया आदिनवदर्शं द्वापराय बहिःसदं कलये सभास्थाणुम्। तै. ब्रा. III. 4. 16. For आदिनव vide अथर्व VII. 114. 4 'आदिनवं प्रतिदीव्ने घृतेनास्माँ अभि क्षर'. सायण explains 'आदिनवदर्शं मर्यादाया देवनस्य द्रष्टारं परीक्षकम्'. The meanings of these technical expressions in gambling are extremely uncertain.

1736. ये वै चत्वारः स्तोमाः कृतं तत्। अथ पञ्च कलिः सः। तस्माच्चतुष्टोमः। तै. ब्रा. I. 5. 11.

1737. कलिः शयानो भवति संजिहानस्तु द्वापरः। उत्तिष्ठंस्त्रेता भवति कृतं सम्पद्यते चरन्। ऐ. ब्रा. 33. 3. The शाङ्खायनश्रौत (15. 19) reads कलिः शयानः पुरुषः and उत्तिष्ठंस्त्रेता भवति. मनु IX. 301–302 seem to be reminiscent of this verse of the ऐ. ब्रा.

becomes Kṛta'. The Śat. Br. V. 4. 4. 6 speaks of Kali[1738] as '*abhibhū*' (the vanquisher) and suggests that Kali is a throw of five that vanquishes all others. In the Chān. Up. IV. 1. 4 it is said 'as (in a game[1739] of dice) all the lower throws are included in the Kṛta throw which becomes victorious, so to him (to Raikva) comes (the merit of) all the good acts that people do'. Here Śaṅkara explains that Kṛta is a throw of dice having four marks, while other throws that have three, two or one mark are called Tretā, Dvāpara and Kali respectively. The Muṇḍaka Up. I. 2. 1 refers to Tretā[1740]. 'This is the truth; the sacrificial rites which the sages saw in the *mantras* (i. e. as prescribed in the hymns of the Ṛgveda and other vedas) have been performed in many ways in the Tretā'. This last word is explained by Śaṅkarācārya in two ways, first as referring to the threefold priestly duties (of hotṛ, adhvaryu and udgātṛ) which are based on the three Vedas and alternatively as referring to the Tretā age. From this resume it appears that even up to the times of the latest period of Vedic literature (i. e. Upaniṣads) the words Kṛta, Tretā, Dvāpara and Kali were used in the sense of throws of dice in gambling and that it is very doubtful whether they were used in the sense of different ages of the world. Even in the Mahābhārata Kṛta[1741] and Dvāpara are used also in the sense of throws of dice (vide Virāṭa 50. 24). In the Gopatha Brāhmaṇa (I. 28) there is a reference to the beginning of the Dvāpara age.

Even in the Vedāṅga Jyotiṣa[1742] (of Ṛg.) the word *yuga* is used in the sense of a period of five years (pañcasaṁvatsaramayaṁ

1738. अथास्मै पञ्चाक्षान्पाणावावपति । अभिभूरस्येतास्ते पञ्च दिशः कल्पन्तामित्येष वा अयानभिभूर्यत् कलिरेष हि सर्वानयानभिभवति तस्मादाहाभिभूरसीति । शत. ब्रा. V. 4. 4. 6. It is impossible to say definitely how the game was played. Vide S. B. E. vol. 41 p. 106 for a note on the various explanations.

1739. यथा कृतायविजितायाधरेयाः संयन्त्येवमेनं सर्वं तदभिसमेति यत्किंच प्रजाः साधु कुर्वन्ति । छान्दोग्य IV. I. 4 and 6. शङ्कर explains: यथा लोके कृतायः कृतो नामायो द्यूतसमये प्रसिद्धश्चतुरङ्कः स यदा जयति द्यूते प्रवृत्तानां तस्मै विजिताय तदर्थमितरे त्रिद्व्येकाङ्का अधरेयास्त्रेताद्वापरकलिनामानः संयन्ति संगच्छन्तेऽन्तर्भवन्ति । छान्दोग्य IV. 3. 8 suggests that each die was marked in all with ten dots (4, 3, 2, 1) 'तस्मा उ ह व्युस्ते वा एते पञ्चान्ये पञ्चान्ये दश सन्तस्तत्कृतम्'.

1740. तदेतत्सत्यं मन्त्रेषु कर्माणि कवयो यान्यपश्यंस्तानि त्रेतायां बहुधा सन्ततानि । मुण्डकोप. I. 2. 1.

1741. नाक्षान् क्षिपति गाण्डीवं न कृतं द्वापरं न च । विराट 50. 24 (cr. ed. 45. 23).

1742. माघशुक्लप्रपन्नस्य पौषकृष्णसमापिनः । युगस्य पञ्चवर्षस्य कालज्ञानं प्रचक्षते ॥ verse 5 of वेदाङ्गज्योतिष.

yugādhyakṣaṁ prajāpatim). The ancient Pitāmahasiddhānta which is not now extant, stated, according to the Pañcasiddhāntikā of Varāhamihira (XII. 1), that *yuga* means five years of the Sun and the Moon (raviśaśinoḥ pañca yugaṁ varṣāṇi Pitāmahopadiṣṭāni). This sense of the word is still found in the Sabhāparva 11. 38.

The Nirukta (I. 20) distinguishes between ancient sages and those of later days in the words,[1743] 'the (ancient) sages had an intuitive perception of *dharma* and they imparted the Vedic mantras by instruction to later (sages) who had no intuitive perception of dharma'. But it does not mention or refer to any theory of four yugas. Both Gaut. I. 3-4 and Āp. Dh. S. II. 6. 13. 7-9 give expression to the view that among sages of old transgressions of dharma and violent actions are observed, but that on account of their distinguished spiritual greatness they incurred no sin, while a person of later days, being weak in spiritual merit, should not imitate them, otherwise he would come to grief. Here a distinction is drawn between very ancient sages and later sages as regards the endowment of spiritual merit, but nothing is said about the names or the theory of the four yugas. Āp. Dh. S. I. 2. 5. 4 further says[1744] that sages are not born among men of later days (*avareṣu*) on account of the transgressions of religious ordinances (prevalent in later ages). Therefore, it would not be quite wrong to assume that the theory had not been fully developed even in the times of the early dharmasūtras of Gaut. and Āp. even though both held that they were living in an age of decline and that sages coming after the authors of the *mantras* were inferior.

Here epigraphic evidence affords some help in fixing the lower limit of the period when the theory of yugas must have been developed.

In the Rock Edicts of Aśoka No. 4 and No. 5 we have at Kalsi and two other places the words 'āva kapam' (yāvat kalpam) and at Girnar the words 'āva saṁvaṭa kapa' which mean 'up to the end of the kalpa' or 'up to the end of the kalpa when the clouds or fires of destruction called saṁvarta

1743. साक्षात्कृतधर्माण ऋषयो बभूवस्तेऽसाक्षात्कृतधर्मभ्य उपदेशेन मन्त्रान्संप्रादुः। निरुक्त I. 20. Almost the same words occur in वनपर्व 183. 67.

1744. तस्मादृषयोऽवरेषु न जायन्ते नियमातिक्रमात्। आप. ध. सू. I. 2. 5. 4.

will arise'[1745]. Vide C. I. I. vol. I. pp. 8, 10, 30–33. This indicates that the idea of a *kalpa* (a vast period of time at the end of which the universe would be dissolved) which is part of the theory of the yugas had been developed in the 3rd century B. C. The Junāgadh Inscription of Rudradāman[1746] (150 A. D.) refers to 'wind the velocity of which was as terrible as that at the end of the yuga'. In certain very early inscriptions of Pallava[1747] kings (of about the 3rd or 4th century A. D.) they are described as 'always ready to extricate dharma that had sunk deep owing to the evil effects of the Kali age'. In one of the Gupta Inscriptions dated in the 96th year of the Gupta era (415–16 A. D.) Dhruvaśarman is praised as following the path of righteous conduct which prevailed in Kṛtayuga,[1748] while the Chammak copperplate of the Vākāṭaka emperor Pravarasena II also speaks of Kṛtayuga (Gupta Inscriptions No. 55 p. 237 at p. 240). The Talgunda inscription of the early Kadamba king Kakusthavarman refers to Kaliyuga (E. I. vol. VIII p. 34). It is not necessary to adduce passages from inscriptions of a later date. From the above it may be said that the theory of yugas and kalpas had begun to take shape at least in the 4th or 3rd century B. C. and that in the first centuries of the Christian era it had been fully developed. It must have gone through several stages in the course of its development. For example, Brahmagupta (Brāhmasphuṭa-siddhānta XI. 10) states that the theory of yugas, Manus and kalpas set out by Āryabhaṭa was not like that of the smṛtis.

The same conclusion is arrived at from a consideration of the classical Sanskrit literature. The theory of *yugas* and *manvantaras* as detailed in the Mahābhārata (Vanaparva chapters 149, 188, Śānti chapters 69, 231–232), Manu chap. I, Viṣṇudharma-sūtra XX. 1–21, the Purāṇas (such as Viṣṇu I. 3, VI. 3, Mārkaṇḍeya 46, Brahma 229–230, Matsya 142–144) and astronomical writers from Brahmagupta is briefly as follows: Kṛta, Tretā, Dvāpara and Kali comprise together with the period

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1745. Compare : ततः संवर्तको वह्निर्वायुना सह भारत । लोकमाविशते पूर्वमादित्यैरुपशोषितम् । वनपर्व 188. 69.

1746. युगनिधनसदृशपरमघोरवेगेन वायुना in E. I. vol. VIII p. 36 at p. 43.

1747. Vide कलियुगदोषावसन्नधर्मोद्धरणनित्यसंनद्धस्य—which occurs as an epithet of Yuvamahārāja Viṣṇugopavarman in I. A. vol. V. p. 50 at p. 51 and of Simhavarman in the Pikira grant in E. I. vol. VIII p. 159 at p. 162.

1748. कार्तयुगाचारसद्धर्मपथमाश्रितेन ... ... ध्रुवशर्मणा in Gupta Inscription No. 10 pp. 44–45.

called *sandhyā* (that precedes each yuga) and the period called *sandhyāṁśa* (that follows each yuga) 12000 years, i. e. Kṛta, Tretā, Dvāpara and Kali extend respectively over 4000, 3000, 2000, 1000 years and sandhyā and sandhyāṁśa of these four extend over 400, 300, 200 and 100 years each (i. e. the sandhyā of Kṛta is 400 years and the sandhyāṁśa of Kṛta is 400 years and so on). But these are divine years. Each divine year is equal to 360 human years. Therefore we have to multiply 12000 by 360 to arrive at the number of human years in the four yugas (i. e. the figure is 4320000). The Kṛtayuga with its sandhyā and sandhyāṁśa comes to 1728000 human years, Tretā to 1296000, Dvāpara to 864000 and Kali to 432000. These four yugas are together called sometimes caturyuga (Manu I. 71) or simply yuga also (Vanaparva 188. 27, Śānti 232. 29); 1000 of these four yugas constitute a day of Brahmā, which is called Kalpa. The night of Brahmā is of the same duration. At the end of a kalpa the universe is resolved into Brahmā (and this is called *pralaya*) and at the end of Brahmā's night the world is created again. In one day of Brahmā there are 14 Manus and therefore each Manvantara is equal to about 71 caturyugas (1000 divided by 14). The life of Brahmā is 100, out of which half is gone and therefore the present is said to be the 2nd or latter half (*dvitīya parārdha*) of the life of Brahmā and at present the kalpa that is running is called Vārāha. From the above it will be seen that, according to the Purāṇas, the universe has been created and dissolved many times and there have been numerous Manvantaras also (vide Manu I. 80). The four yugas in various ways differ in their characteristics. Kṛta is so called because it is an age in which everything is fulfilled by every one and nothing is left to be done.[1749] The symbolic colours of the four yugas are respectively white, yellow, red and dark (Vanaparva 189. 32). In Kṛta, Dharma prevails in all its perfection and it stands with all its four feet (dharma being figuratively spoken of as vṛṣa,[1750] a bull, in Manu VIII. 16 and Vanaparva 190. 9) and it declines or deteriorates by a quarter in each of the following yugas (Manu I. 81-82 =Śānti 232. 23-24), so that in Kali only one quarter (or one foot) of dharma remains and adharma occupies three quarters. In Kṛta people are entirely free from diseases, secure all that

1749. कृतमेव न कर्तव्यं तस्मिन् काले युगोत्तमे । वनपर्व 149. 11.

1750. कृते चतुष्पात्सकलो निर्व्याजोपाधिवर्जितः । वृषः प्रतिष्ठितो धर्मो मनुष्ये भरतर्षभ ॥ वनपर्व 190. 9.

they desire and the length of human life is four hundred years, all of which decline by one quarter successively in the following three yugas (Manu I. 83=Śānti 232. 25). The dharmas in each of the four yugas are different ; *tapas* was the highest in Kṛta, philosophic knowledge in Tretā, sacrifice in Dvāpara and charity alone in Kali (Manu I. 85-86=Parāśara I. 22-23 =Śānti 232. 27-28). Manu I. 85, Śānti 232. 27 and 261. 8, Parāśara I. 22 all have the same verse stating that the dharmas prescribed for men in each yuga differ.

In Kṛta, Tretā, Dvāpara and Kali the dharmas (that should be observed) are respectively declared by Manu, Gautama, Śaṅkha-Likhita and Parāśara (Parāśara I. 24). In Kṛta there was a single varṇa but at the end of Kali almost all will be śūdras (Brahma 229. 52, Matsya 144. 78). Parāśara (I. 25-28) points out other characteristics of the four yugas, which need not be detailed here. Manu IX. 301 and 302, however, indicate that the yugas are not watertight parts of Time. It is the king who can by his conduct introduce the characteristics of one yuga into another. Medhātithi on Manu IX. 301 explains that the king should not be misled into thinking that Kali is a historical part of Time and that he (the king) cannot therefore be Kali or Kṛtā, but that it is the king's way of conducting himself that will produce the conditions of the several yugas among his people.

In Vanaparva 149. 11-38, Vāyu 32 and 57-58, Liṅga 39, Matsya 142-144, Garuḍa 223, Nāradapurāṇa (pūrvārdha 41) and in several other purāṇas there are descriptions of the nature of the four yugas, which are passed over here. But it is important to see how the Great Epic and the Purāṇas describe the nature of Kaliyuga. Vanaparva chap. 188 and 190, the Yugapurāṇa chapter of the Gargasaṁhitā (published in the J. B. O. R. S. vol. 14 pp. 400 ff. by K. P. Jayaswal), Harivaṁśa (Bhaviṣya chap. 3.5 ff), the Brahmapurāṇa 229-230, Vāyu 58 and 99. 391-428, Matsya 144. 32-47, Kūrma I. 30, Viṣṇu VI. 1-2, Bhāgavata XII. 2, Brahmāṇḍa II. 31, Nāradīya (Pūrvārdha 41, verses 21-88), Liṅga 40, Nṛsiṁha 54. 11-49 and several others present, often in identical verses, a very pessimistic, dismal and harrowing account of what will happen in the Kali age. One extract[1751] taken from the Vanaparva (188) is added at the end by way of sample, of which a summary is given below. All men will generally be liars ; in

1751. Vide Appendix.

the Kali age substitutes will be invented for *yajñas*, gifts and *vratas*; brāhmaṇas will do actions prescribed as peculiar to śūdras and śūdras will be acquiring wealth (which is the peculiar privilege of vaiśyas) or they will maintain themselves by following the profession of arms; brāhmaṇas giving up the study of the Veda and the performance of sacrifices and devoid of the staff and deer skin will eat anything (i. e. will not observe rules about *bhakṣyābhakṣya*); brāhmaṇas will not engage in *japa* (muttering of Vedic mantras), while śūdras will be intent on *japa*; when the world will be turned topsy-turvy, it will be the first indication of coming destruction; many *mleccha* kings will rule over the earth, who will be sinful, will issue false edicts and will be engaged in fruitless wrangling; there will be Āndhras, Śakas, Pulindas, Yavanas, Kāmbojas, Bāhlīkas (from Balkh) and valiant Ābhīras (as rulers); no brāhmaṇa will maintain himself by pursuing his own dharma; kṣatriyas and vaiśyas will indulge in prohibited or bad activities; people will be short-lived, have little strength, their valour and prowess will be insignificant, their spirits will be low and their bodies diminutive and they will speak words that have very little truth; countries will be mostly untenanted and the spaces will be occupied by beasts and snakes; people will be engaged in dry discussions about *brahma* (they will have no realisation or experience of brahma), śūdras will employ the word 'bhoḥ' (in addressing others[1752] of higher classes) and brāhmaṇas will employ the word *ārya* (in addressing peoples other than brāhmaṇas); swarms of insects will abound; all perfumes will not smell as fragrant as before and fluids will lose their sweet taste; women will have numerous progeny, will be of short stature, devoid of character and good conduct and engage in sexual intercourse against the order of nature; countries will suffer pangs of hunger[1753], squares where four

1752. This would be against the rules of dharmasūtras and smṛtis about abhivādana. Vide H. of Dh. vol. II. pp. 336-339.

1753. Nilakaṇṭha notes that the verse अट्टशूला जनपदाः &c. was variously explained before him; अट्ट meant either 'food' or 'śulka'; शूल means विक्रय, शिव means Veda, चतुष्पथ means ब्राह्मण or the square where four roads meet, केश means भग. नील० himself explains differently. According to him the explanation is: अट्टमन्नं तदेव शूलं दुःखदं येषां ते क्षुद्व्याधिग्रस्ताः, शिवाः सर्वपुरुषार्थप्रदायितया कल्याणकराः शूलाः पण्यस्त्रियो येषु ते शिवशूलाः विटवाराङ्गनापूर्णाः, स्त्रियो पाणिग्रहणवत्योपि केशोपलक्षितं सौभाग्यं लज्जामूलं शीलं शूलमिव दुःखदं त्याज्यं च यासां ताः केशशूलाः भर्तृद्वेषिण्यस्त्यक्तलज्जाः. The शूद्रकमलाकर p. 244 quotes the verse अट्टशूलाः and then remarks 'अस्यार्थमाह परशुरामः। अट्टमन्नं शिवो वेदः शूलं विक्रय एव च। केशाश्च भगमित्याहुर्वेदतत्त्वार्थदर्शिनः ॥.'

roads meet will be full of *nautch* girls, and women will give up their chastity; cows will yield little milk; trees will produce few flowers and fruits and will abound in crows; brāhmaṇas will receive gifts from kings that are guilty of brāhmaṇa murder and that falsely accuse others of grave sins; people in the various spaces will be dunned for alms by brāhmaṇas steeped in greed and ignorance, who falsely make a pretence of their being religious; householders afraid of the burden of taxation, guilty of thieving and subsisting on trade, will remain concealed under the false garb of ascetics; brāhmaṇas pretending to be brahmacārins will, through greed of wealth, fraudulently allow their nails and hair to grow; persons in the various stages of life, that observe false rules of conduct but are drunkards and indulge in incest, will desire mundane objects and the increase of flesh and blood; the āśramas (forest dwellings) will be full of various heretical opinions and will extol the merits of food provided by others (out of charity); Indra will not send down rain at the proper season and all seeds will not put forth proper growth; people will take delight in killing and will be impure and abundant will be the fruit of adharma; whoever will then be acting according to his dharma may be regarded as having a short time to live, since there will be no dharma whatever (in Kaliyuga); people will sell goods mostly with false weights and measures and traders will be full of many tricks; the righteous will wither away, the sinful will prosper; dharma will lose its strength and adharma will be powerful; those who follow dharma will have short lives and will be poor, while those who give up dharma will have long lives and will be prosperous; in the sporting grounds of cities people will be sinful (or adulterous) and people will enter into transactions by sinful means; people, that have saved a little, will be puffed up with the pride of the rich; people with whom wealth was deposited privately through trust will mostly be ready to deny the deposit, shamelessly saying 'it was never so deposited;' the sporting grounds of towns and temples belonging to towns will be infested by beasts and birds that prey upon human beings; girls of seven or eight years will become pregnant and males of ten or twelve years old will have sons born to them; people will be baldheaded in the 16th year and there will be quick decline in the length of the lives of men; young men whose lives will be short will act like old people and old people will have the habits of the young; women acting contrary to their duty

will deceive worthy husbands, will be of bad character and will have intercourse with slaves and even beasts; wives of heroes will resort to other men and will be guilty of adultery even while their husbands are alive.[1754]

The dates of the composition of the Purāṇas not being beyond controversy, it would be difficult to point to a particular period as the time when the full-fledged theory of the yugas was developed. But this much can be stated with certainty that by the 4th century A. D. at the latest the theory had been completely developed. Āryabhaṭa[1755] (in Kālakriyāpāda 10) states that when three *pādas* of the yuga (i. e. Kṛta, Tretā and Dvāpara) and 3600 years more had elapsed, he was 23 years old i. e. (accepting the calculations current at present) in 499 A. D. Āryābhaṭa was 23 years old and so was born in 476 A. D. In his Pañcasiddhāntikā Varāhamihira[1756] (505 to 587 A. D.) summarises the data of several astronomical

1754. It would be interesting to compare the descriptions of Kali given in the Mahābhārata and the several Purāṇas. Some verses are common to several of them and the ideas are almost the same throughout. The principal counts in the indictment are that there will be śūdra and Mleccha kings, that heretical sects will predominate, that the ordered duties and privileges of the several castes will be turned topsyturvy and there will be great physical and moral decline. After Vanaparva chap. 188 there is an additional description in chap. 190 of what will happen in the Kali age, which appears, from the express words of Vanaparva 191. 16, to have been taken from the Vāyupurāṇa. So this chapter is a later interpolation. The verse अट्टशूला &c. occurs again in Vanaparva 190. 52 and also in Harivaṁśa (Bhaviṣyaparva 3. 12), Brahmapurāṇa 230. 11, Matsya 47. 258. Two characteristic verses are: शुक्लदन्ता जिताक्षाश्च मुण्डाः काषायवाससः । शूद्रा धर्मं वदिष्यन्ति शाठ्यबुद्ध्योपजीविनः ॥ (ब्रह्मपुराण 230. 13, वायु 58. 59, ब्रह्माण्ड II. 31. 59-60, Harivaṁśa, Bhavisyaparva 3. 15) and देवस्थानेषु चैत्येषु नागानामालयेषु च । एडूकचिह्ना पृथिवी न देवगृहभूषिता ॥ वनपर्व 190. 67. The first says that śūdras with white teeth and (professing to have) curbed their senses, with the head shaved and wearing ochre-coloured robes and maintaining themselves on false doctrines will propound dharma. This is a direct attack on Buddhist monks taken from the class of śūdras. The 2nd says that the earth will be covered with edifices enshrining bones (of Buddha) and not with temples of gods. The idea about girls of 5, 6 and 7 being mothers occurs in Viṣṇupurāṇa VI. 1. 41-42, Brahma 229. 41-42, Nāradīya Pūrvārdha 41. 64 and elsewhere.

1755. षष्ट्यब्दानां षष्टिर्यदा व्यतीता त्रयश्च युगपादाः । त्र्यधिका विंशतिरब्दास्तदेह मम जन्मनोतीताः ॥ कालक्रियापाद 10. This does not necessarily mean that he composed this work when he was only 23.

1756. Vide J. A. S. B. for 1912 pp. 275-278 for the date of Varāhamihira.

Siddhāntas of which Romaka is one, about which Brahmagupta remarks that the Romaka siddhānta is outside the pale of smṛtis because[1757] it omits all mention of yugas, manvantaras and kalpas that have been regarded by the smṛtis as useful in measuring time. Kālidāsa[1758] in Raghuvaṁśa 15. 96 speaks of dharma as having only three feet (in Tretā) when Rāma made up his mind to depart from this world. No scholar will assign to Kālidāsa a date later than the middle of the 5th century A. D. Therefore the theory of yugas must be deemed to have been perfected long before 400 A. D. K. P. Jayaswal holds that the Yugapurāṇa chapter of the Garga-saṁhitā was composed about 50 B. C. (J. B. O. R. S. vol. 14 p. 399) and he is probably right.

At present it is the practice to hold Kali 5046 (expired) as equal to 1945 A. D. or *śake* 1867 or *saṁvat* 2001-2. But it appears that there were several views about the date of the beginning of the Kaliyuga. The exact starting point on the above computation was Friday, 18th February 3102 B. C. One view was that Kaliyuga was about to begin when the great Mahābhārata war was fought out.[1759] This view is expressed in the Aihole Inscription which appears to equate the beginning of Kali with the Bhārata war and states that 3735years (expired) from the Bhārata war are equal to 556 years of the *śaka* era.[1760] Āryabhaṭa knew this computation, since he says that he was 23 years old when three parts of the (great) yuga and 3600 had elapsed (Kāla-kriyāpāda, verse 10). Another view set forth in the Purāṇas is that Kaliyuga began when Kṛṣṇa finished his *avatāra* and went to heaven.[1761] This would put the beginning

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1757. युगमन्वन्तरकल्पाः कालपरिच्छेदकाः स्मृतावुक्ताः । यस्मान्न रोमके ते स्मृतिबाह्यो रोमकस्तस्मात् ॥ ब्राह्मस्फुटसिद्धान्त I. 13 q. by S. B. Dikshit (2nd ed. of 1931) in भारतीयज्योतिःशास्त्र p. 155. ब्रह्मगुप्त flourished from 598 A. D. to at least 665 A. D.

1758. तस्मिन्नात्मचतुर्भागे प्राङ्नाकमधितस्थुषि । राघवः शिथिलं तस्थौ भुवि धर्मस्त्रिपादिव ॥ रघुवंश 15. 96.

1759. अन्तरे चैव संप्राप्ते कलिद्वापरयोरभूत् । समन्तपञ्चके युद्धं कुरुपाण्डवसेनयोः ॥, आदि. 2. 13 ; प्राप्तं कलियुगं विद्धि । शल्य 60. 25 ; एतत्कलियुगं नामाचिराद्यत्प्रवर्तते वनपर्व 149. 38.

1760. त्रिंशत्सु त्रिसहस्रेषु भारतादाहवादितः । सप्ताब्दशतयुक्तेषु गतेष्वब्देषु पञ्चसु ॥ पञ्चाशत्सु कलौ काले षट्सु पञ्चशतासु च । समासु समतीतासु शकानामपि भूभुजाम् ॥ E. I. vol. VI p. 1 at p. 7.

1761. यस्मिन्कृष्णो दिवं यातस्तस्मिन्नेव तदा दिने । प्रतिपन्नः कलियुगस्तस्य संख्यां निबोधत ॥ वायु 99. 428-429, ब्रह्माण्ड III. 74. 241. The भागवत XII. 2. 33 reads प्रतिपन्नं कलियुगमिति प्राहुः पुराविदः. मत्स्य 273. 49-50, विष्णु IV. 24. 40 respectively read प्रतिपन्नं कलियुगं प्रमाणं तस्य मे शृणु and प्रतिपन्नं...तस्य संख्यां निबोध मे ॥. ब्रह्मपुराण 212. 8 has the same idea in different words.

of Kaliyuga several years after the date arrived at on the first view.[1762] Vide Mausalaparva chap. 1. 13 and 2. 20 for reference to the lapse of 36 years before Kṛṣṇa's passing away. The Yugapurāṇa appears to make Kaliyuga start on the day Draupadī died (vide J. B. O. R. S. vol. 14 p. 400). Another view is that of Varāhamihira who says that the constellation of the Great Bear was in Maghā when Yudhiṣṭhira was on the throne and that that time is arrived at by adding 2526 years to the śaka year.[1763] This would place Yudhiṣṭhira in 653 of the Kali age (as calculated at present) and not at the end of Dvāpara and the beginning of Kali. The Rājataraṅgiṇī I. 56 quotes the Bṛhat-saṁhitā and holds that Kurus and Pāṇḍavas flourished in 653 of the Kali-yuga (I. 51). Great efforts have

1762. Vide J. R. A. S. for 1911 pp. 479ff and 675ff about the Kaliyuga and its era; 'Five thousand years ago, the Mahābhārata war' a paper by Dr. D. S. Triveda in Festschrift Kane pp. 515–525 in which after setting out many divergent views and criticizing them, it is held that the Mahābhārata war was fought out in 3137 B.C.; 'Purāṇic date of Mahābhārata', a paper by Mr. M. Raja Rao in the Bulletin of the Ganganath Jha Research Society, vol. II pp. 125–143, which mentions numerous dates suggested by various scholars. I am not at all convinced of the correctness of Dr. Triveda's conclusions, in spite of the great learning that he brings to bear on the problem. Vide also his paper in 'Bhāratīya Vidyā', vol. VI (1945) pp. 117–120.

1763. आसन् मघासु मुनयः शासति पृथ्वीं युधिष्ठिरे नृपतौ। षड्द्विकपञ्चद्वियुतः शककालस्तस्य राज्ञश्च॥ बृहत्संहिता 13.3. This is not a verse of Garga as some scholars assert. In 13. 2 Varāhamihira promises that he will dilate on the movements of the seven sages (*municāra*) according to the *opinion* of Vṛddhagarga. It appears that 13.3 is his *own* verse. Garga held the opinion that the Great Bear remained in one constellation for one hundred years. That is all. Utpala quotes the verse of Garga, but it is in the Anuṣṭubh metre. It was believed by the authors of the Purāṇas and even by such astronomers as Varāhamihira that the constellation of the Great Bear remained in each *nakṣatra* for a hundred years. Vide Bṛ. Saṁ. 13.4, Bhāgavata XII. 2. 27–28, Matsya 273. 40–44, Vāyu 99. 421–422, Viṣṇu IV. 24. 33. Mr. Velandi Gopal Aiyer in 'Chronology of Ancient India' (p.75) holds that 'ṣaḍ-dvika-pañca-dvi' means 26 times 25 i. e. 650 years and that we should read 'śakyakāla' or 'śākyakāla' (p. 73) instead of 'śakakāla' in Bṛ. Saṁ. 13. 3 in order to correct the error of one mātrā in the 4th quarter of the verse. In this last he is in error; he forgets that, according to works on chandas-śāstra, a short syllable at the end of a pāda is deemed to be prosodially long (and therefore the last syllable in Bṛ. Saṁ. 13. 3 is long). Besides, he is not able to cite a single example to show why the usual rule of अङ्कानां वामतो गतिः should not be followed here also or that Varāhamihira elsewhere employs a similar method in a compound word.

been made by several scholars to meet this discrepancy by explaining the word 'ṣaḍ-dvika-pañca-dviyutaḥ' (in the Bṛhat-saṁhitā) in various fanciful ways, which are far from satisfactory. There is no reason why *dvika* should not straightforwardly be taken in the sense of 'two',[1764] as the Līlāvatī and Bṛ. Saṁ. 71. 5 itself do.

It is difficult to believe that the Śakakāla referred to in that verse is different from the Śakendrakāla or Śakbhūpakāla, which the Pañcasiddhāntikā (I. 8) and the Bṛhat-saṁhitā (8. 20–21) make use of in several places. At least Varāhamihira gives no such indication. Mr. C. V. Vaidya in his 'Mahābhārata, a criticism' pp. 80–81 holds that the Śakakāla referred to in the verse 'āsan maghāsu &c.' is the era of Buddha's Nirvāṇa. There is hardly any warrant for this assumption. His interpretation of 'ṣaḍ–dvika-pañca-dviyutaḥ' as meaning 2566 (and not 2526) is not bad and does not seriously affect the argument about the date of Yudhiṣṭhira. On that interpretation Yudhiṣṭhira would be placed in 2488 B. C. (instead of in 2448 B. C.). But there is no reason why the usual values of *ṣaṭ* (six), *dvika* (two) and other words should not be understood to be meant here.

The data contained in the Nidhanpur plates of Bhāskaravarman (E. I. vol. XII p. 65), when properly scrutinized, appear to favour the position of Varāhamihira. Those plates in setting out the genealogy of Bhāskaravarman start with Naraka, whose son Bhagadatta fought on the side of the Kauravas in the Mahābhārata war and was killed by Arjuna (vide Droṇaparva chap. 29). Bhagadatta's son is said to have been Vajradatta. After Vajradatta his descendants ruled over Kāmarūpa for 3000 years and then Puṣyavarman, a scion of the Bhagadatta family, became king of Kāmarūpa. King Bhāskaravarman was 12th from Puṣyavarman and was a contemporary of Emperor Harṣa (first half of the 7th century A. D.). Taking an average of 20 years for the reign of each ruler, Puṣyavarman should be taken as having flourished about the beginning of the 5th century A. D. Adding 3000 years which are alleged by the plates to have intervened between Puṣyavarman and Vajradatta, we arrive at about 2500 B. C. as the time of Vajradatta and therefore approximately of the Mahābhārata war. This

1764. The लीलावती (अङ्कपाशप्रकरण verse 262, Ānand. ed.) reads द्विकाष्ट-काग्न्यां त्रिनवाष्टकैर्वा, where the com. says द्वावेव द्विकाः.

corresponds rather very closely with the statement of Varāhamihira who puts Yudhiṣṭhira's reign at 653 Kaliyuga (i. e. 2448 B. C.). On the other hand, if we assume that the Mahābhārata war was fought in or that Kaliyuga started in 3101 B. C., then Puṣyavarman who flourished 3000 years after the Mahābhārata war would have to be placed about 101 B. C. and there will be an interval of about 700 or 750 years between Puṣyavarman and Bhāskaravarman. A period of 700 or 750 years for 12 rulers would work at about 60 years for each ruler, which is a very improbable average. Therefore the Nidhanpur plates do not support the hypothesis that the Mahābhārata war was fought about 3101 B. C., but rather support the statement of Varāhamihira that it was fought about 2500 B. C.

Another epoch for the Mahābhārata war and the beginning of Kaliyuga is indicated by some passages of historic importance found in some of the Purāṇas. The Vāyupurāṇa (99. 4–15) and the Matsyapurāṇa (273. 36) say that from the birth of Parīkṣit to the coronation of Mahāpadma (Nanda) a period of 1050 years elapsed, while the Bhāgavata XII. 2. 26 assigns 1015 years for the same. There is some mistake in the Purāṇa texts here. The Matsya (in chap. 271. 17–30) enumerates the kings of the Bārhadratha dynasty of Magadha descended from Sahadeva, son of Jarāsandha, and states that the dynasty will rule (i. e. ruled) for a thousand years. Then chap. 272 (verses 1–5) speaks of five kings, who will be followed by the Śiśunāka dynasty, that together reigned for 360 years and the last king in which was Mahānandi (verses 6–13) whose son from a śūdra wife was Mahāpadma (272. 18). So if the years of these three dynasties are added we get the period of about 1500 years. This is supported by the Bhāgavatapurāṇa (IX. 22. 48 and XII. 1–2) and Vāyupurāṇa (99. 308–321), which latter says that 32 kings of the Bārhadratha dynasty will rule for 1000, then five Vītihotra kings for 138 years (Pradyota and others) and then the Śaiśunāka (Śiśunāga in the Bhāgavata and in the Brahmāṇḍapurāṇa III. 74. 134–135) dynasty for 362 (in all exactly 1500 years). The same periods are given by the Viṣṇupurāṇa (IV. 23 and 24) and by the Brahmāṇḍapurāṇa III. 74. 121–135. Śrīdhara in his comment on Bhāgavata XII. 2. 26 states that the interval between Parīkṣit and Nanda is 1498 as the Bhāgavata holds that the Śaiśunāga dynasty ruled for 360 years (XII. 1. 4–6). Therefore the proper reading in the Vāyupurāṇa or Matsyapurāṇa or the Bhāgavata should be 'pañcaśatottaraṁ'

instead of 'pañcāśaduttaram' or 'pañcadaśottaram.' Taking the interval between Parīkṣit and Nanda to be 1500 years and holding as most modern scholars do that the Nandas flourished in the 4th century B. C., Parīkṣit, the grandson of Arjuna, the Mahābhārata war and the beginning of Kaliyuga would have to be placed in the 19th century B.C. Therefore there are so far three main different epochs for the Mahābhārata war viz. 3101 B. C., 2448 B. C. and about 1900 B. C. All the three are well attested by evidence dating at least from about the 5th century A. D. One cannot dogmatically say that a certain tradition alone out of these three is the only correct one. All that one can say is that one prefers a particular tradition to the other two. Since the epoch of 1900 B. C. is supported by the Purāṇas in great detail by citing the names of the several kings and their regnal years I personally regard the epoch of 1900 B. C. for the Mahābhārata war as more probable than the other two. It is best to acknowledge one's inability to assign a certain date to the Mahābhārata war rather than twist plain words or ignore altogether inconvenient passages or put on them fanciful or far-fetched interpretations. The first desideratum is to prepare critical editions of the important purāṇas from the best mss. material. Even then it is doubtful whether unanimity among scholars can be secured. A scholarly beginning was made by Pargiter in his book 'The Purāṇa texts of the dynasties of the Kali Age' (1913). He compares the material available in the printed editions of several Purāṇas and Mss. on the subject of royal dynasties. One cannot or may not agree with many of the assumptions and inferences that he makes or draws, yet one cannot withhold admiration for his industry and method. For example, I cannot agree with him when he takes 'bhaviṣye kathitān' of the Matsyapurāṇa or 'bhaviṣye paṭhitān' of Vāyu (99. 267) as referring to the Bhaviṣyapurāṇa. In many passages of the Purāṇas we have references to 'bhaviṣyajña' (Brahmāṇḍa III. 74. 105), which simply means 'those who are conversant with sections on the future' contained in ancient works like the Mahābhārata.

It is not possible owing to limitations of space to enter into detailed examination of the theories of several scholars about the date of the Mahābhārata war. But one or two important matters will have to be referred to here.

Mr. Velandi Gopala Aiyer in 'The chronology of Ancient India' in chap. II. (pp. 51–104) examines the astronomical data

furnished by the Mahābhārata and relying on the far-fetched and wrong interpretation put by him on the words of the Bṛhat-saṁhitā (quoted above) and on the fact that the Kollam era in Malabar appears to take 1177 B. C. as the starting point for Kaliyuga arrives at the conclusion that the Mahābhārata war took place in the latter part of 1194 B. C. This theory goes against all the three other starting points which are supported by comparatively ancient and authoritative evidence.

The information derived from the fragments of the work of Megasthenes on India are supposed to shed some light on this vexed problem. In one fragment (p. 115 of 'Ancient India as described by Megasthenes &c.') occurs the passage: 'From him (i. e. Bacchus) to Alexander the Great 6451 years are reckoned with three months additional, the calculation being made by counting the kings that reigned in the intermediate period to the number of 153'. An extract from Pliny makes out the number of kings to be 154. As against this we have the statement in the 'Indika' of Arrian (2nd century A. D., translated by McCrindle, p. 203): 'From the time of Dionysos to Sandrakottus, the Indians counted 153 kings and a period of 6042 years, but among these a republic was thrice established ...... another to 300 years and another to 120 years. The Indians also tell us that Dionysos was earlier than Heracles by fifteen generations and that except him no one made a hostile invasion of India'. This passage is of very great importance for one reason, viz. that it proves that in the 4th century B. C. there was a persistent Indian tradition which carried back Indian civilization and ordered government to 6000 years before the 4th century B. C. But there is great doubt as to what Megasthenes actually wrote and there is some divergence as to the number of years and kings also. Besides, this has no direct bearing on the date of the Mahābhārata war or the beginning of Kaliyuga, unless Heracles is taken to be Hari-Kṛṣṇa, as some scholars[1765] do. The account of Heracles (pp. 201-203 of McCrindle's work) agrees in some respects with the legends about Kṛṣṇa viz. that he was honoured by the Sourasenoi (Śūrasenas), an Indian tribe who possess two large

1765. Vide Mr. C. V. Vaidya's 'Mahābhārata, a criticism' pp. 75-76, where ignoring the figures of total years (viz. 6042 or 6451) he comes to the conclusion that Kṛṣṇa flourished about 3101 B. C. since 138 Kings between Heracles and Sandrakottus (i. e. Candragupta) may have ruled in all about 2760 years, taking 20 years as the average for each reign.

cities Methora (*Muthurā*) and Cleisobora and that Heracles had many wives; but then there are other anecdotes about Heracles which do not at all agree viz. his having a daughter Pandaia with whom when she was only seven Heracles had intercourse for raising a mighty race. Here there is some confusion with the Pāṇḍavas and Kuntī or with the Pandyan kingdom in the South. Moreover, 6000 years for 153 or 154 kings is rather a very long period. It cannot be said that a king is only a unit of time in these computations (40 years on an average), since such Purāṇas as the Vāyu and the Matsya expressly mention the number of years that each dynasty held sway, the number of kings belonging to each dynastly and the lengths of the reigns of several kings. It is no doubt true that the details of the names of the several kings, the number of kings and the duration of their reigns do not always tally. It appears that the Purāṇas that contain historical material were recast at different times, e. g. the Vāyupurāṇa (99. 383) refers to the Guptas while the Matsyapurāṇa is silent about them. The extant Purāṇas cannot be supposed to have given imaginary details about historical dynasties, but they must have had before them older records or traditions. The Purāṇas do not appear to have invented names of new kings or given imaginary lengths of reigns. The authors surely knew that the total of the several dynasties between Parīkṣit and Nanda did not square with the total of the lengths of the reigns of the several individual kings. But they gave both these without trying to solve the discrepancies as they wanted to record all the traditions they had got before them. The Purāṇas have a claim on our attention, but in the present state of our knowledge they cannot unfortunately form the basis of any certain or connected history and chronology of ancient times.

A few words may here be said about the attempts made to deduce the age of the Mahābhārata war from the astronomical references in the Epic.

The number of works and papers in which the dates of the Bhārata war and of Kaliyuga are discussed is very large. A few of them only are noted here. The late Shankar Balkrishna Dikshit in his exhaustive volume on ' the History of Indian Astronomy ' (in Marathi, 2nd ed. of 1931) deals with this subject at pp. 107–127. Mr. C.V. Vaidya in 'Mahābhārata, a criticism, 1904 'devotes one chapter (pp. 55–78) and appendix note V (pp. 180–190) to the date of the Mahābhārata war. He holds fast to the traditional

view that the Mahābhārata war was fought in 3101 B. C. Mr. N. Jagannatha Rao writes a book on 'the Age of the Mahābhārata war' (Bezwada, 1931), in which he disputes the identity of Candragupta Maurya with Sandracottus mentioned by Megasthenes, holds that Sandracottus is the Gupta Emperor Candragupta, that the date of Candragupta Maurya would be about 1535 B. C., that the word 'Śakakāla' in the Bṛhatsaṁhitā refers really to the era of the Persian Emperor Cyrus about 550 B. C. and that the Great War was fought in 3139 B. C. The work does not go deeply into anything and is rather superficial. There is a lengthy and interesting article by Mr. K. G. Sankar on 'some problems of Indian Chronology' in Annals of the B. O. R. Institute, Poona, vol. XII pp. 301-361 in which he seems to favour 1198 B. C. as the date of the Mahābhārata war. Mr. J. S. Karandikar, editor of the 'Kesari' (Poona), contributed certain articles (in Marathi) which are now issued as a booklet (1939), in which he examines many of the astronomical references in the Mahābhārata and the Paurānic lists about the dynasties of ancient Indian kings and arrives at the conclusion that the Mahābhārata war was fought in 1931 B. C. Though I differ from him in important details, I think that the date arrived at by him appears to be one of the two probable or best authenticated dates among the several dates proposed by various scholars. Prof. P. C. Sen-Gupta contributed a paper to the Journal of the Bengal Asiatic Society in 1937, vol. III pp. 101-119, in which he discusses the date of the Mahābhārata war and arrives at the conclusion that the Bhārata war was fought about 2449 B. C. This also is a very probable date and has the authority of the tradition mentioned in the Bṛhatsaṁhitā that the śaka era is 2526 years after the era of Yuddhiṣṭhira. In J. A. S. B. for 1938, vol. IV pp. 393-413 Prof. Sen-Gupta again examines 'Bhārata battle traditions' and confirms the date 2449 B. C. already arrived at by him. Dr. K. L. Daftari delivered some lectures in the University of Nagpur on 'the astronomical method and its application to the chronology of Ancient India' which are published in book form (Nagpur, 1942). This work exhaustively deals with almost all the passages of astronomical importance contained in the Mahābhārata and is characterized by great industry, patient calculations and ingenious explanations of conflicting passages. His conclusion is that the Bhārata war was fought in 1197 B. C. Although one feels nothing but admiration for the author's great learning and acumen, it is not possible to agree with the date arrived at by him or with

the method and theories adopted by him. Apart from details one cannot accede to the following theories propounded by him viz. his division of the astronomical references into two groups, his assumption that a passage in the Droṇaparva (chap. 184) about the rising of the moon at about 2 A. M. is an interpolation (because it does not square with his explanations of the other passages), his bold expedient of changing 'citrām' to 'caitām' in Bhiṣma 3. 12 and his transposition of Śravaṇa and Puṣya in Śalyaparva 34. 6, his taking 'aṅgāraka' to mean Venus (and not Mars). Dr. Daftari's work was reviewed by Prof. Sen-Gupta in JASB for 1943, vol. IX pp. 221–228 and after submitting it to a searching analysis and calculations, the learned Professor arrives at the conclusion that he cannot accept Dr. Daftari's method, which is useless for all practical purposes. Prof. K. V. Abhyankar contributes an article to the Annals of B. O. R. I. for 1944, vol. XXV. pp. 116–136 on 'the date and time of the Bhārata war', in which he takes into account only the material available in the Epic itself and bases his conclusions on the principle of following the voice of the majority. He furnishes a useful table in an appendix that shows at a glance some of the important astronomical passages of the Mahābhārata with their interpretations given by the commentators Arjunamiśra and Nīlakaṇṭha and by Mr. Karandikar and himself and finally gives his opinion that the traditional view of the date (3101 B. C.) is approximately correct. It appears that he had not, when he wrote the article, the work of Dr. Daftari before him nor Prof. Sen-Gupta's devastating criticism of it. It will be apparent from the above that the attempts to settle the exact date of the Mahābhārata war on the strength of the astronomical materials contained therein are dismal failures. Hardly any two scholars agree on the exact dates so arrived at, which range from 1193 B. C. to 3101 B. C. and even beyond. There are many reasons for this disappointing result. In the first place, several of the criteria mentioned in the epic are hopelessly inconsistent, as will be made clear a little below by a few examples. Further, several scholars assume that the epic was composed within a short time (about three years according to Ādiparva, 62, 52, cr. ed. chap. 56. 32) after the war. Many (including my humble self) cannot subscribe to this view. Besides, we are totally in the dark about the details of the system of the calendar generally adopted at the period of the war. Many suppose that it largely resembled the rules contained in the Vedāṅga Jyotiṣa (of the Ṛgveda). There is no unanimity on the question whether the months

ended with *amāvāsyā* (i. e. whether they were *amānta*) or whether they ended with Full Moon (i. e. whether they were *pūrṇimānta*).[1766] That a pūrṇimānta month was in vogue in Vedic times is beyond dispute. For example, Tai. S. states that Pūrvā Phalgunī is the last night of the year and Uttarā Phalgunī is the mouth (i. e. beginning). Similarly Tai. S. VII. 4. 8. 2 declares that the citrāpūrṇamāsa is the mouth of the year; while Śāṅ. Br. IV. 4 declares that the Phālgunī Paurṇamāsī is the *mukha* of the year. The author or authors of the Mahābhārata, in describing the evil portents of an impending tragic or catastrophic event, often assemble together (as in Udyoga 143.5–29, Bhīṣma 2. 16–33) all of them irrespective of the fact whether some of them are possible in the very order of nature. For example, it is stated that Arundhatī went before Vasiṣṭha (Bhīṣma 2. 31), that a mare gave birth to a cow calf and that a bitch gave birth to a jackal (Bhīṣma 3. 6) and that images of gods trembled, laughed and vomited blood (Bhīṣma 2. 26, which may be compared with Bṛhatsaṁhitā 45. 8 and the verses of Garga quoted by Utpala thereon); it is several times said that the Moon and the Sun are seized (i. e. eclipsed) at an unusual season (*aparvaṇi*) or simultaneously by Rāhu (vide

1766. That the months in North-west India were pūrṇimānta in the Kharoṣṭhī records drawn up in Kaniṣka's era is shown in E. I. vol. 18 p. 266 and E. I. vol. 19 at p. 10. Aparārka (p. 423) quotes a verse from ब्रह्मपुराण 'अश्वयुक्कृष्णपक्षे तु श्राद्धं कार्यं दिने दिने' and remarks that Bhādrapada dark half is in that verse said to be the dark half of Āśvina. In the Bhaviṣya-purāṇa (Uttara-parva, chap. 132. 17) the Full Moon of Phālguna is said to be the end of the month' (किमर्थं फाल्गुनस्यान्ते पौर्णमास्यां जनार्दन । उत्सवो जायते लोके ग्रामे ग्रामे पुरे पुरे ॥). In the Matsyapurāṇa (159. 4–6) it is said that Skanda and Viśākha were born on the 15th of the dark half of Caitra, that in the bright half of Caitra itself on the 5th Indra made one boy out of the two and on the 6th crowned him as Lord. This shows that in the Matsya Caitra was pūrṇimānta and not amānta. When the month is pūrṇimānta, the first fortnight ending with amāvāsyā is assigned to a month which is one month in advance of the *amānta* reckoning i. e. what is Kārtika dark half with amānta reckoning becomes Mārgaśirṣa dark half with the pūrṇimānta reckoning. On Jai. VI. 5. 31 Sabara quotes a Vedic passage about गवामयन 'पुरस्तात्पौर्णमास्याश्चतुरहे दीक्षेरन् । मुखं वा एतत् संवत्सरस्य यच्चैत्री पौर्णमासी', which seems to indicate that the year began with the Full Moon of Caitra and that the pūrṇimānta reckoning was not unknown.

Bhīṣmaparva 3. 28 and 32-33 and Āśvamedhikaparva 77. 15).[1767] Further, these very verses state that the eclipses of the Sun and the Moon took place on the *same day* and on the 13th and in the same month. Dr. Daftari interprets 'ekāhnā' as meaning on the same week-day and 'on the 13th tithi' (pp. 5-6 of his work) calculated according to the wrong method of those days. It is extremely doubtful whether week-days had been known or named at the time of the Bhārata war or even at the time of the composition of the Epic. It is too much to assume that the astronomers of the Mahābhārata war days, while they could predict eclipses and state accurately the position of the planets, were so clumsy as to allow a mistake of two *tithis* to occur in their calendar with respect to the occurrence of a solar eclipse. The words in Bhīṣmaparva 3. 28 and 32-33 appear to be a mere exaggerated statement of portents. If real observed eclipses are meant they would have to be taken in the order of the words in the text, viz. first an eclipse of the Moon (on Kārtika paurṇimā) and then an eclipse of the Sun (on Kārtika amāvāsyā) and further it must be assumed that the dark half of Kārtika contained only 13 days. Dr. Daftari (pp. 44-46 of his work) holds that first there was a solar eclipse on Āśvina amāvāsyā, then a lunar eclipse and then again a solar eclipse. In that case we should expect the order to be 'sūrya-candrau' and not 'candrasūryau'. Besides, hardly any other scholar holds that there were three eclipses one after another. Therefore, it is hardly possible to say with certainty that the author accurately states astronomical facts observed by him or even traditionally handed down as definite facts and does not draw on his own imagination about the portents or does not exaggerate

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1767. चन्द्रसूर्यावुभौ ग्रस्तौ एकाह्ना हि त्रयोदशीम्। अपर्वणि ग्रहं यातौ प्रजासंक्षयमिच्छतः ॥ चन्द्रसूर्यावुभौ ग्रस्तौ एकमासीं त्रयोदशीम्। अपर्वणि ग्रहेणैतौ प्रजाः संक्षपयिष्यतः ॥ भीष्मपर्व 3. 28, 32. The cr. edition of the Mahābhārata gives only the first of these two verses. Utpala in his com. on Bṛhatsaṁhitā 5. 26 reads एकमासे त्रयोदशे. The words प्रजाः संक्षपयिष्यतः make it quite clear that eclipses and the fortnight of thirteen tithis are taken as very evil omens. Similar words occur in Bhīṣma 3. 12 and 13 quoted below in note 1779. In Bṛhatsaṁhitā 3. 6 it is said that a *graha* called Tvaṣṭṛ makes the orb of the Sun look dark even when there is no parva (amāvāsyā). Utpala quotes on the same a verse of Parāśara 'अपर्वणि शशाङ्कार्कौ त्वष्टा नाम महाग्रहः। आवृणोति तमःश्यामः सर्वलोकविपत्तये ॥. There is no doubt whatever that the writer of Bhīṣma 2 and 3 is more concerned with chronicling evil omens than with setting out accurate astronomical and other data observed by him personally or even by others.

as a rhetorical device. In Bṛhatsaṁhitā 5. 26, 97-98 Varāhamihira states the evil consequences if a moon eclipse precedes or follows a sun eclipse in the period of one fortnight.

Most of the important astronomical details will now be set out from the time when Lord Kṛṣṇa is said to have started as a peace-maker to the Kauravas. In Udyogaparva 83. 6-7[1768] it is said that Kṛṣṇa started in the month of Kārtika (Kaumude māsi) *at the end of the śarad season* and about the advent of winter, when the moon was in Revatī nakṣatra and on *maitra muhūrta*. Āśvina and Kārtika are at present said to form the season of *śarad*, and Mārgaśīrṣa and Pauṣa form *hemanta*. This verse itself presents a difficulty. On the Full Moon day of Kārtika, the moon is in Kṛttikā nakṣatra and the moon would be in Revatī three days before i. e. on or about the 12th of the bright half of Kārtika. If we take this along with the words 'at the end of śarad' it follows that the month was *pūrṇimānta*; otherwise (i. e. if the month were *amānta*) it would be highly improper to say that the 12th of the bright half of Kārtika was at the end of Śarad. After Kṛṣṇa failed in his mission he returned to the Pāṇḍavas (for all of which we must allow a few days after the 12th of Kārtika *śukla*) and reported what Duryodhana and he himself said. Two of the statements reported by him are very material. Duryodhana said to his allies: 'March towards Kurukṣetra (for battle); to-day the moon is (in) Puṣya nakṣatra'.[1769] If Kṛṣṇa started on his mission when the moon was in Revatī (on the 12th of the bright half of Kārtika), then these above words must have been uttered in his presence on or about the 5th of the dark half of Kārtika (or of Mārgaśīrṣa if the month was pūrṇimānta). Another important statement is that Kṛṣṇa in his conversation with Karṇa (whom he had tried to win over) stated to him: 'this is a mild month in

1768. मैत्रे मुहूर्ते संप्राप्ते मृद्वार्चिषि दिवाकरे। कौमुदे मासि रेवत्यां शरदन्ते हिमागमे॥ उद्योगपर्व 83. 6-7. 15 muhūrtas of the day and 15 of the night are referred to even in the शतपथब्राह्मण X. 4. 2. 18, 25, 27 and the तैत्तिरीयब्राह्मण (III. 10. 1.1) mentions the names of the 15 muhūrtas of the day (such as Citra, Ketu &c.). In the Kumārasambhava VII. 6 the *maitra* muhūrta is mentioned in connection with ceremonies preceding marriage. The commentators explain maitra as the 3rd muhūrta after sunrise. In the Atharva Jyotiṣa fifteen muhūrtas of the day are enumerated of which the first three are Raudra, Śveta and Maitra.

1769. आज्ञापयच्च राजेन्द्र पार्थिवान्हृष्टचेतसः। प्रयाध्वं वै कुरुक्षेत्रं पुष्योऽद्येति पुनः पुनः॥ उद्योग 150. 3.

which fodder and fuel can be easily had, which is neither too hot nor too cold; on the 7th day (from today) there will be amāvāsyā; battle may be joined on that day; they regard it as having Indra for its (guardian)[1770] deity'. Therefore this must have been said on or about the 8th of the dark half of the month. But what was the name of the month? If the reckoning was pūrṇimānta, the month must be Mārgaśīrṣa, but if the reckoning was amānta, the month must be Kārtika. The words 'this month' taken along with Udyoga 83. 6-7 would indicate that the month meant was Kārtika. Further, Indra was the deity of Jyeṣṭhā nakṣatra and the amāvāsyā (as stated in Udyoga 142. 16-18) had Jyeṣṭhā nakṣatra. In modern times this is possible on Kārtika Amāvāsya, while there cannot be Jyeṣṭhā nakṣatra in modern times on Mārgaśīrṣa amāvāsyā, but only on or about the 13th of the dark half of it. But this passage itself (Udyoga 142. 16-18) is in conflict with Śalya 35. 10 where Kṛṣṇa says: 'the Kauravas do not act up to my words, being driven to do so by the Time Spirit; O! descendants of Pāṇḍu, go out (for battle) together with me when the moon is in Puṣya'. If the moon was in Jyeṣṭhā on amāvāsyā when Kṛṣṇa had proposed to Karṇa that the war should be begun, this passage of Śalyaparva would put the beginning of the war 16 or 17 days after Kārtika amāvāsyā, which is not warranted by any other passage and which no scholar puts forward. In Udyoga 143. 11 it is stated,[1771] 'the spot on the moon has turned away (disappeared) and Rāhu approaches the Sun.' The exact meaning of the first quarter is not quite clear. Some interpret it to mean that 'an eclipse of the Moon has already taken place'. The moon looks beautiful with the spot thereon (compare Śākuntala I '*malinamapi himāṁśor lakṣma lakṣmīṁ tanoti*). The disappearance of the spot might have been looked upon as an evil portent. Even supposing that the first quarter refers to an eclipse of the moon, it does not matter much. The second quarter states that an eclipse of the Sun was expected when Karṇa addressed these words to Kṛṣṇa, the envoy of the

1770. सौम्योयं वर्तते मासः सुप्रापयवसेन्धनः । ... निष्पक्वौषधिवनस्फीतः फलवानल्पमक्षिकः ॥ निष्पङ्को रसवत्तोयो नात्युष्णशिशिरः सुखः ॥ सप्तमाच्चापि दिवसादमावास्या भविष्यति । संग्रामो युज्यतां तस्यां तामाहुः शक्रदेवताम् ॥ उद्योग 142. 16-18. नीलकण्ठ explains 'संग्रामः संग्रामसाधनकलापः युज्यतामेकीभूयावतिष्ठताम्। संग्रामारम्भस्तु दिनान्तर एवेति वक्ष्यते।'. न कुर्वन्ति वचो मह्यं कुरवः कालनोदिताः । निर्गच्छध्वं पाण्डवेयाः पुष्येण सहिता मया ॥ शल्य 35. 10.

1771. सोमस्य लक्ष्म व्यावृत्तं राहुरर्कमुपैति च । दिवश्चोल्काः पतन्त्येताः सनिर्घाताः सकम्पनाः ॥ उद्योग 143. 11. Almost these very words occur in भीष्म 2. 32 (व्यावृत्तं लक्ष्म सोमस्य भविष्यति महद्भयम्) and in भीष्म 3. 11 (अर्कं राहुरुपैति च).

Pāṇḍavas. Later on in Bhīṣma 2. 23 it is stated[1772] that the Moon had become devoid of brightness, was without its spot on the Full moon day of Kārtika and assumed the colour of fire while the sky retained its original hue; so that if there was an eclipse of the moon it was on *Kārtika Paurṇimā* and an eclipse of the sun was yet to take place. On the whole, therefore, one may assume, though not without hesitation, that the months were *amānta*, that possibly there was an eclipse of the moon on Kārtika Full Moon when Kṛṣṇa had gone as a peace-maker and that there was a solar eclipse on the amāvāsyā of Kārtika just about the time the war began. In Śalyaparva 56. 10 we again meet with the words (at the beginning of the mace duel) 'Rāhu swallowed the Sun at an unusual season'. This passage and Āśvamedhika 77. 15 (Rāhur-agrasadādityaṁ yugapat somameva ca) rather suggest that the eclipse of the sun at an unusual time had become a stock example of an evil portent without the actual occurrence thereof. The words in Śalyaparva refer to the last day of the war before the mace duel between Duryodhana and Bhīma and the passage says that Rāhu seized the sun and there was an earth-quake also. Hardly any one (except Dr. Daftari) holds that there was another eclipse on the last day of the war, when just before the war there already had been an eclipse on Kārtika amāvāsyā.

As to the exact *tithi* and *nakṣatra* on which the Great War began, there are many conflicting statements. In the Bhārata-sāvitrī it is stated that the Bhārata war started in the first month (i. e. Mārgaśīrṣa) of Hemanta on the 13th of the bright half when the moon was in the nakṣatra presided over by Yama (i. e. Bharaṇī)[1773]. The Bhārata-sāvitrī is no part of the

1772. अलक्ष्यः प्रभया हीनः पौर्णमासीं च कार्तिकीम् । चन्द्रोभूदग्निवर्णश्च समवर्णे (v. l. पद्मवर्ण-) नभस्तले ॥ भीष्म 2. 23.

1773. The following verses of the भारतसावित्री are material for the days of the important events of the war : 'हेमन्ते प्रथमे मासे शुक्लपक्षे त्रयोदशी । प्रवृत्तं भारतं युद्धं नक्षत्रं यमदैवतम् ॥ फाल्गुन्यां निहतो भीष्मः कृष्णपक्षे च सप्तमी । अष्टम्यां चैव सौभद्रो नवम्यां च जयद्रथः । दशम्यां भगदत्तस्तु महायुद्धे निपातितः । एकादश्यामर्धरात्रौ हतो वीरो घटोत्कचः । ततः प्रभातसमये विराटद्रुपदौ हतौ । द्वादश्यां चैव मध्याह्ने द्रोणाचार्यो रणे हतः ॥ त्रयोदश्यां तु मध्याह्ने वृषसेनो निपातितः । चतुर्दश्यां तु पूर्वाह्णे रणे दुःशासनो हतः । ... अमायां धर्मपुत्रेण शल्यो मद्राधिपो हतः । ... अमायामर्धरात्रे तु राजा दुर्योधनो हतः । ... अमायामेव यामिन्यां द्रौणिना निहतास्तदा । धृष्टद्युम्नः शिखण्डी च द्रौपद्याः पञ्च चात्मजाः । (set out at the end of हरिवंश in the Citraśālā edition). There are some statements here that are opposed to the text of the Mahābhārata. Abhimanyu

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Mahābhārata, yet it has some traditional value, being probably earlier than all the commentators of the Mahābhārata and later than the text of Sauti. In conflict with this passage of the Bhāratasāvitrī we have the words of Udyoga 142. 18 (quoted above) where Kṛṣṇa says to Karṇa that battle may be joined on amāvāsyā when the moon is in Jyeṣṭhā. The Mahābhārata itself states that after the disposition of the vast armies were made and commanders were appointed, Duryodhana called Ulūka and sent him to the Pāṇḍavas to inflame their feelings with the words[1774] (Udyoga 160. 93) 'the worship of steel (weapons) has been performed, the site of Kurukṣetra is dried up (has no mud), your horses are well fed, warriors are hired by you; fight tomorrow'. This Lohābhihāra (or-sāra) is the same as the rite of *nīrājanā* (according to the Amarakośa) or is performed immediately after nīrājanā (for which see pp. 230-231 above). Kauṭilya (II. 30 p. 135) prescribes a nīrājanā rite at the start of an invasion and when two seasons meet. So a nīrājanā rite on Kārtika amāvāsyā would be most appropriate (both because a battle was to be begun and because at the end of Kārtika the season of Śarad ended). The Bṛhatsaṁhitā (43. 1-2) prescribes a nīrājanā rite for horses, elephants and men on the 8th or 12th of Kārtika bright half or on the 15th of Kārtika (Full Moon or *amāvāsyā*). It is extremely doubtful

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was killed on the third day after Droṇa became commander-in-chief. It may be noted that Nīlakaṇṭha explains यमदैवतम् differently as meaning Mṛgaśirṣa which has a double deity as its presiding deity. It may be noted that this text of the भारतसावित्री as printed is not quite reliable, since नीलकण्ठ in his commentary on भीष्म 17. 2. reads 'अर्जुनेन हतो भीष्मो माघमासेऽसिताष्टमी' for फाल्गुन्यां ... सप्तमी and 'अथोदृश्यां तु मध्याह्ने भारद्वाजो निपातितः' for 'द्वादृश्यां... रणे हतः'. If these readings be accepted it follows that the Bhāratasāvitrī impliedly recognizes the existence of a *tithikṣaya*, since Droṇa is there said to have been killed on the 13th tithi of dark half when the epic itself says that he died on the 15th day after the battle began. As the war commenced on the 13th of bright half, there would be 16 days on 13th of dark half.

1774. लोहाभिहारो निर्वृत्तः कुरुक्षेत्रमकर्दमम् । पुष्टास्तेऽश्वा भृता योधाः श्वो युध्यस्व सकेशवः ॥ उद्योग 160. 93. About this, अमरकोश says 'लोहाभिहारोऽस्त्रभृतां राज्ञां नीराजनो विधिः (v. l. नीराजनाद्विधिः).' The तिथितत्त्व of रघुनन्दन quotes (Jivananda p. 35) a passage from the Devipurāṇa that on the 6th of Caitra Skanda is to be worshipped and it is called स्कन्दषष्ठी. The निर्णयसिन्धु II (on मार्गशीर्षकृत्य) says 'मार्गशीर्षशुक्लषष्ठी चम्पाषष्ठीति महाराष्ट्रेषु प्रसिद्धा । ... ... इयमेव स्कन्दषष्ठी.'

whether Mr. Karandikar is right in saying that Lohābhihāra (or–sāra) refers to Skandasaṣṭhī. In the first place, the worship of weapons can be done at any time, particularly when a battle is to be commenced. In the second place, it is not necessary to postulate the lapse of six days and more for the sending of Ulūka and his return from the time when Kṛṣṇa said that battle may be begun on amāvāsyā. The armies had taken up opposite positions on the field of Kurukṣetra and Ulūka could have come and gone in a day or two. Further, we have no evidence that Skanda-ṣaṣṭhī was performed in northern India in Mārgaśīrṣa, though very late works composed by *dākṣiṇātyas* like the Nirṇayasindhu say that Skandaṣaṣṭhī is the same as Campāṣaṣṭhī in Mahārāṣṭra and is observed on the 6th of Mārgaśīrṣa. Raghunandana quoting Devīpurāṇa places Skandaṣaṣṭhī on Caitra 6th of the bright half and is supported by the Matsyapurāṇa quoted above in n.1766. There is no reason why the actual fight should commence so late as the 13th day of Mārgaśīrṣa (or even 11th as Mr. Karandikar suggests) when Kṛṣṇa said that it should be joined on amāvāsyā. It is quite possible that the war began on or about Kārtika amāvāsyā. The observance of 'lohābhihāra' does not lead to the certain inference that the war was not begun till several days after the 6th of the bright half of Mārgaśīrṣa. Similarly, Mr. Karandikar says that the moon is ordinarily in Bharaṇī on the 11th or 12th of the bright half of Mārgaśīrṣa. It may be so. But it is possible to have the moon in Bharaṇī even on the 13th. I am inclined to hold that the Bhāratasāvitrī dates of the beginning of the war embody a different tradition altogether from the one contained in the Mahābhārata itself. The Bhāratasāvitrī is silent about nakṣatras on which the principal events of the war took place except at the commencement of the war. It mentions no *tithikṣaya* or *tithivṛddhi*. Kṛṣṇa sends a message with Ulūka to Duryodhana (Udyoga 162. 57) 'tomorrow you will be seen' (in your true colours) and Arjuna does the same (Udyoga 163. 14).

The Mahābhārata nowhere states quite explicitly the *tithi* or *nakṣatra* on which the battle actually commenced. We have to rely upon various indications to arrive at the *tithi* or *nakṣatra*. Balarāma could not bear to see the fight between Duryodhana and Bhīma, both of whom were his pupils in mace-duel and went on a pilgrimage (Udyoga 157. 33–35 and 158. 39). Balarāma returned on the 18th day of the war and (in Śalyaparva 34. 6)

he remarks, 'it is 42 days since I left (on a pilgrimage); I started when the moon was in Puṣya and I have come here again on Śravaṇa '[1775]. In Śalya 35. 13-14 it is stated that Balarāma went to the river Sarasvatī on pilgrimage on 'maitra-nakṣatra-yoga' (i. e. when the moon was in Anurādhā). This conflict may be resolved by holding, as Nīlakaṇṭha does, that Balarāma left the Pāṇḍavas on Puṣya, reached the Sarasvatī on Anurādhā and returned on Śravaṇa. If we follow Śalya 34.6 the war commenced when the moon was in or near Mṛgaśirṣa (18 nakṣatras before Śravaṇa). This would be in direct conflict with a passage in Bhīṣmaparva 17.2 that[1776] 'on the day of battle the moon was in the province of Maghā' and also other passages that will be indicated later on. This last passage should ordinarily mean that the moon was near Maghā. Mr. Karandikar looks upon Śalya 34.6 as an interpolation and takes Bhīṣma 17.2 to mean that the moon was in an inauspicious nakṣatra of the category of Maghā. This would suit Bharaṇī but not Rohiṇi or Mṛgaśirṣa. His meaning is far-fetched and he does not explain why Bharaṇī was not directly mentioned in the Epic, when in several other places the epic does mention directly the nakṣatra concerned. His explanation gives the go-by to the 13th *tithi.* Dr. Daftari boldly asserts that we must transpose the nakṣatras (in Śalya 34. 6) and read 'śravaṇe samprayātosmi puṣyeṇa punarāgataḥ'. If we once resort to these methods followed by these two learned writers, there is no knowing where one should stop. There are scholars who might with equal or greater plausibility claim that most of these astronomical references are either of very late date or are interpolations (vide Vaidya's ' Mahābhārata ' p. 71). Similarly, if we once concede that we are at liberty to change readings to suit our theories even in the total absence of all manuscript evidence, then there is no sure foundation on which we can build. The Mahābhārata passages have a tradition of centuries behind them. We must, in the absence of good mss. evidence to the contrary, either accept *them all* and try to explain them or we must give up the job of reconciling them as a hopeless tangle and rely on other evidence to arrive at the date of the

1775. चत्वारिंशदहान्यद्य द्वे च मे निःसृतस्य वै । पुष्येण संप्रयातोस्मि श्रवणे पुनरागतः । शल्य 34. 6.

1776. मघाविषयगः सोमस्तद्दिनं प्रत्यपद्यत । दीप्यमानाश्च संपेतुर्दिवि सप्त महाग्रहाः ॥ भीष्म 17. 2. नीलकण्ठ explains: मघा पित्र्यं नक्षत्रं तस्य विषयो देशः पितृलोकस्तद्गतः सोमः ।

Bhārata war as best as we can. We saw above that Jyeṣṭhā was the nakṣatra on Kārtika amāvāsyā and, if the war began then, the nakṣatra on the 18th day from then would be Puṣya. Nīlakaṇṭha, following the Mīmāṁsā rules of interpretation, holds that the concluding passage (*upasaṁhāravākya*) is superior in strength to passages that occur at the beginning of a work, that the passage in Śalya 34. 6 is the dominant one and other conflicting passages must be either brushed aside or explained away in conformity with Śalya 34. 6 and gives an explanation of 'Maghāviṣayagaḥ somaḥ' which is quite unsatisfactory. Dr. Daftari also holds, relying on Atharva Jyotiṣa, that the passage means 'the moon was in Mūla' (p. 27 para. 62–65 of his work 'Astronomical method' &c.). The explanation is ingenious but one fails to see why this round-about way was resorted to and why the text did not simply say 'mūlanakṣatragaḥ somaḥ', which violates no metrical requirements. In Anuśāsana parva (167. 26–28) Bhīṣma, while on the bed of darts, states:[1777] 'the sun has turned (towards the north); 58 days have passed by since I laid myself down on this (arrow bed). This is the mild month of Māgha that is now current, three parts of it remain and this fortnight should be *śukla*'. Bhīṣma was struck down on the 10th day of the war; so 67 nights had passed from the day when the war began to the day in Māgha on which this was uttered. The difficulty is how to connect 'tribhāgaśeṣaḥ', whether as an adjective of 'māsa' or of 'pakṣa'. If we take it in the first way, these words were uttered on 8th of Māgha śukla: if we take it as an adjective of 'pakṣa', then they will have to be taken as uttered on the 4th of the bright half or on the 4th of the dark half which may be regarded in its astrological effects as equal to *śuklapakṣa* (though the tithi itself is in the dark half). If the words were uttered on the 8th of Māgha śukla, the Bhārata war began on Kārtika amāvāsyā (which will be in consonance with Udyoga 142. 18 quoted in n. 1770). The passage in Anuśāsana (167. 26–28) is supported by two other passages. After the war was over, Yudhiṣṭhira went to the capital and stayed there for 50 nights and when he found that the Sun had started on its apparent northward path (*uttarāyaṇa*) he came to Bhīṣma (Anuśāsana 167. 5). In Śāntiparva 51. 14 Kṛṣṇa says to Bhīṣma: 'You have yet to live 56 days.' Nīlakaṇṭha, who takes Śalya 34. 6 as the dominant passage, puts a

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1777. अष्टपञ्चाशतं रात्र्यः शयानस्याद्य मे गताः । ... माघोऽयं समनुप्राप्तो मासः सौम्यो युधिष्ठिर । त्रिभागशेषः पक्षोऽयं शुक्लो भवितुमर्हति ॥ अनुशासन 167. 26–28.

most far-fetched construction on the word 'aṣṭapañcāśatam', which he takes to mean 'one hundred minus 58' i. e. 42 nights and explains 'pañcāśataṁ ṣaṭ ca' as equal to 30. This shows to what straits commentators are reduced when conflicting passages have got to be explained away. One more indication about the *tithi* on which the war commenced is afforded by Droṇaparva chap. 184, where it is stated that a grim fight went on till midnight when Ghaṭotkaca was killed, that the fatigued armies then snatched some sleep, that then the moon rose at about 2 A. M. (verse 46) and that the fight was then resumed[1778] (chap. 186. 1 'tribhāgamātraśeṣāyāṁ rātryāṁ yuddham-avartata). This description of moonrise shows that Ghaṭotkaca was killed on or about the 11th of the dark half. We know from the Mahābhārata itself that Ghaṭotkaca was killed on the night of the 4th day of Droṇa's command or on the 14th day after the war began. This would establish that the war began on the 12th or 13th of the bright half and ended on the 14th of the dark half or on amāvāsyā of Mārgaśirṣa. Dr. Daftari holds that this description is an interpolation.

If we try to find out the *nakṣatra* on which the war began, we have one sure criterion in Śalya 34. 6 viz. that the war ended on Śravaṇa nakṣatra when Balarāma returned from pilgrimage. Now the moon cannot be in Śravaṇa at all in Mārgaśirṣa dark half, but may be in it on the first or 2nd of the bright half of Pauṣa. So between the tithi and nakṣatra as disclosed by the Mahābhārata itself there is a slight discrepancy of a day or two. There is another way of looking at the data. Bhīṣma was waiting for uttarāyaṇa to begin and we know that he passed away on the 59th day after he was mortally wounded on the 10th day of the war. Therefore, a period of 67 days (58 nights of his lying on arrow-bed plus 9 nights of the battle when he slept on his usual bed) elapsed between the beginning of the war and the beginning of Uttarāyaṇa, which undoubtedly occurred in Māgha in that year (as Anuśāsana 167, 28 expressly states). The real difficulty is to find out the *tithi* of the commencement of Uttarāyaṇa. But if we accept the approximate tithi and nakṣatra (as stated above) of the end of

1778. त्रिभागमात्रशेषायां रात्र्यां युद्धमवर्तत । कुरूणां पाण्डवानां च संहृष्टानां विशाम्पते ॥ द्रोण 186. 1. नीलकण्ठ explains 'मुहूर्तत्रयावशिष्टायाम्, तत्र सूर्योदयोत्तरं त्रयोदश्यां द्रोणस्य नाशः' i.e. He supposed that घटोत्कच was killed on the 12th of the dark half.

the war (i. e. Mārgaśīrṣa amāvāsyā or 1st of Pauṣa and Śravaṇa nakṣatra), uttarāyaṇa began 49 days thereafter i. e. on or about the 4th of the dark half of Māgha. According to the Vedāṅga-jyotiṣa, 4th of the dark half of Māgha is one of the tithis on which uttarāyaṇa may begin (vide Dikshit's work pp. 75, 91). How scholars accept one of the data and reject others is well illustrated here. Acc. to Śalya 34. 6 the war ended on Śravaṇa (and so should have begun when the moon was in Mṛgaśīrṣa). Acc. to the Bhāratasāvitrī the war began on Bharaṇī and on the 13th of the bright half of Mārgaśīrṣa and ended on Amāvāsyā (and therefore the nakṣatra was Mūla or Pūrvāṣāḍhā). Arjunamiśra gives up the nakṣatras and sticks to the tithis. Mr. Karaṇḍikar gives up the express verse about Śravaṇa (and regards that whole chapter as an interpolation), he gives up the 13th tithi of the beginning of the war as given in the Bhāratasāvitrī, holds that the war began on 11th instead and sticks fast to the Bharaṇī nakṣatra given in the Bhāratasāvitrī. Dr. Daftari altogether changes the reading of Śalya 34. 6 by transposing the nakṣatras mentioned.

The difference between the day of Uttarāyaṇa in Māgha stated in the Mahābhārata and the day thereof at present is utilised by scholars for arriving at the date of the Mahābhārata war.

There are other data in the Mahābhārata from which also the date of the Mahābhārata war is sought to be deduced. Before entering into details, some matters that are accepted by most scholars may be stated here. It is generally held that there were two eclipses, first, one of the moon immediately followed by a solar eclipse, that there was a fortnight of 13 days which was looked upon as very unusual and a very evil omen. Vide Bhīṣma 3. 28 quoted in n. 1767. In Bhīṣmaparva 3. 31–32 Vyāsa is reported as saying, 'I have known amāvāsyā occurring on the 14th, 15th or 16th day (of a pakṣa), but I do not know an amāvāsyā occurring on the 13th day (of a pakṣa); both the moon and the sun were eclipsed in the same month on the 13th day'. In the Mausala-parva[1779] 2. 18–19, when Kṛṣṇa, 36 years after the war, beheld certain portents it is said, "on observing those portents on the amāvāsyā occurring on the 13th day he declared 'Rāhu had made this (13th day) appear as the 14th and 15th (when usually there is amāvāsyā) when the Bhārata

1779. एवं पश्यन् हृषीकेशः संप्राप्तं कालपर्ययम् । त्रयोदश्याममावास्यां तान् दृष्ट्वा प्राब्रवीदिदम् ॥ चतुर्दशी पञ्चदशी कृतेयं राहुणा पुनः । प्राप्ते वै भारते युद्धे प्राप्ता चाद्य क्षयाय नः ॥ मौसलपर्व 2. 18–19,

war took place; to-day it has again occurred for our destruction'. From these words it is clear that the occurrence of amāvāsyā at the end of a *pakṣa* of 13 days was looked upon as a very evil omen. Then many scholars hold that a comet had also appeared at the time of the great war. Bhīṣma 3. 13[1780] states, 'a very frightful comet stands in the sky covering the constellation of Puṣya'. There are grave doubts whether the statement is made from actual observation. The appearance of a comet has always been associated in ancient times with great calamities. Compare Kumārasambhava II. 32 'upaplavāya lokānām dhūmaketurivotthitaḥ'. As indicated above, the Mahābhārata gathers together several possible and impossible things to emphasize their significance as to impending calamities. Therefore the inclusion of a comet among portents does not establish that a comet had actually appeared at the time of the Bhārata war. Supposing for argument that a comet had appeared, that circumstance is of no help at all in settling the date. A large number of comets is included in the sun's retinue. The number of comets of long periods that approach the sun in a century is said to be 300. There is nothing to show what particular comet appeared at the time of the war and no one has data to connect the Mahābhārata comet with Halley's comet or any other comet well-known in modern times. Therefore the *datum* about a comet is entirely worthless for purposes of chronology. According to Bṛhatsaṁhitā 11. 5 and Utpala thereon the ancient writer Parāśara held the view that there were 101 *ketus* and Garga said that there were a thousand. The description in Bhīṣma 3. 13 states that the *perihelion* of the comet was in Puṣya. In Udyogaparva 143. 10 it is said 'since a *graha* specially afflicts Citrā, a great calamity is indeed approaching the Kauravas'. This may probably refer to a comet. Two other verses appear to have some bearing on this. Bhīṣma 3. 12 states[1781] that the white *graha* stands traversing

1780. श्वेतो ग्रहस्तथा चित्रां समतिक्रम्य तिष्ठति । अभावं हि विशेषेण कुरूणां तत्र पश्यति ॥ धूमकेतुर्महाघोरः पुष्यं चाक्रम्य तिष्ठति । सेनयोरशिवं घोरं करिष्यति महाग्रहः ॥ ...श्वेतो ग्रहः प्रज्वलितः सधूम इव पावकः । ऐन्द्रं तेजस्वि नक्षत्रं ज्येष्ठामाक्रम्य तिष्ठति ॥ भीष्म 3. 12, 13, 16. The Madras edition reads श्यामो ग्रहः in भीष्म 3. 16 and Dr. Daftari proposes to read श्वेतां for चित्राम् (p. 64 para 130).

1781. ध्रुवं प्रज्वलितो घोरमपसव्यं प्रवर्तते । रोहिणीं पीडयत्येवमुभौ च शशिभास्करौ ॥ चित्रास्वात्यन्तरे चैव विष्ठितः परुषग्रहः । भीष्म 3. 17 ; compare बृहत्संहिता 11.39 'श्वेत इति जटाकारो रूक्षः श्यावो वियत्त्रिभागगतः । विनिवर्ततेऽपसव्यं त्रिभागशेषाः प्रजाः कुरुते ॥'. उत्पल explains: 'रूक्षः परुषः श्यावः कृष्णवर्णः'. It is remarkable that बृहत्सं. 11. 57 is चित्रासु कुरुक्षेत्राधिपस्य मरणं समादिशेत्तज्ज्ञः ।, thus agreeing very closely with भीष्म 3. 12.

citrā (i. e. it is about to enter into *svāti*) and verse 16 says, ' the white *graha* is fiery like fire emitting smoke and stands occupying Jyeṣṭhā which is a bright star presided over by Indra '. What is meant by ' white graha ' ? The words ' śveto grahaḥ ' should ordinarily denote Venus. Nīlakaṇṭha takes them to mean Ketu (node) in Bhīṣma 3. 12 and another comet in 3. 16. If this latter explanation be accepted there were two comets seen at the time. Even if we hold that Bhīṣma 3. 16 describes the tail of the comet mentioned in 3. 13, that is of very little help. All that would be meant would be that the tail of the comet was a very long one Bhīṣma 3. 17 has been taken to refer to Rāhu by Nīlakaṇṭha, while some modern scholars hold that it refers to a comet. It means, ' a cruel comet standing between Citrā and Svāti, afflicts Rohiṇī and also the sun and the moon '. The description of the Ketu called Śveta in Bṛhatsaṁhitā 11. 39 agrees very closely with the description in the Bhīṣmaparva and Parāśara quoted by Utpala thereon states that the Ketu called ' Śveta ' becomes visible after 115 years and portends the destruction of two-thirds of the population.

Then there are several passages which state the positions of several planets just before the battle or on the day the battle began. Here again at least two different positions are assigned to each planet except Mercury. It is first to be noted that at the beginning of the war all the seven planets excluding Rāhu and Ketu are declared to have been near each other (Bhīṣma 17. 2, q. in note 1776 above). We know from the Mahābhārata itself that the Sun and the Moon on Kārtika amāvāsyā were in Jyeṣṭhā. If the war began on amāvāsyā or a day later, the planets must be near Jyeṣṭhā. If the Bhāratasāvitrī be followed then the war began on Mārgaśirṣa bright 13 and on Bharaṇī. If that were so, the sun and the moon cannot be together. Mr. Karandikar takes 11th of the bright half of Mārgaśīrṣa to be the tithi of the beginning of the war and holds that the Sun was in nakṣatra Jyeṣṭhā and that the moon was in Bharaṇī (following the Bhāratasāvitrī as to this last). I should hold that we are not at liberty to take one datum from one group of statements and another from another group and then say that it is proved that the war was fought at a particular time. It is further noted in Karṇaparva 37. 4 that on Karṇa's death (i. e. 17 days after the war began), the seven planets were seen going away from the Sun.[1782] The positions of the planets at the beginning of the war were as follows :—

1782. निःसरन्तो व्यदृश्यन्त सूर्यात्सप्त महाग्रहाः ॥ कर्ण 37. 4..

SUN-	Udyoga 143. 11 (Rāhu approaches the Sun) Bhīṣma 3. 11 („ „) Bhīṣma 3. 28, 32 (q. above in n. 1767) The Sun was either in Jyeṣṭhā or near Mṛgaśīrṣa.
MOON-	Bhīṣma 3. 17 (*paruṣa graha* i. e. Rāhu afflicted both the Sun and the Moon) and Rohiṇī. Bhīṣma 3. 28, 32 (q. above in n. 1767) Bhīṣma 17. 2 (the Moon was in the province of Maghā q. above in n. 1776).
MERCURY-	Karṇaparva 94. 49 says that on Karṇa's death the son of the Moon (i. e. Mercury), the white luminary, rose slantingly resembling in hue fire and the Sun. The Śalyaparva 11. 18 states that Mars, Venus and Mercury were in conjunction.[1783] If Mars was in Maghā as stated in Bhīṣma 3. 14 and Mars and Mercury were in conjunction Mercury would be in Maghā, which forebodes destruction of people by war, as stated in Bṛhatsaṁhitā 7. 3.
MARS-	Udyoga 143. 9 states, 'Mars having made a retrograde motion in Jyeṣṭhā seeks (to reach or afflict ?) Anurādhā, the nakṣatra presided over by Mitra, as if bringing death (to friends)'. Bhīṣma 3. 14 states: 'Mars is retrograde in Maghā.' What is the meaning of this ? Literally it means that Mars was in Maghā and was retrograde in motion. Mr. Karandikar holds that Mars had only *dṛṣṭi* on Maghā and was in Puṣya. Supposing this is correct, Mars was not near the Sun but far away. Bhīṣma 3. 18 declares: 'Mars, having changed its motion after being retrograde and with the lustre of fire, stands covering Śravaṇa, the mansion of Bṛhaspati'.[1784]

1783. ग्रहश्च तिर्यग् ज्वलनार्कवर्णः सोमस्य पुत्रोऽभ्युदियाय तिर्यक् ॥ कर्णपर्व 94. 49; भृगुसूनुधरापुत्रौ शशिजेन समन्वितौ । चरमं पाण्डुपुत्राणां पुरस्तात्सर्वभूभुजाम् ॥ शल्य 11. 18.

1784. कृत्वा चाङ्गारको वक्रं ज्येष्ठायां मधुसूदन । अनुराधां प्रार्थयते मैत्रं संगमयन्निव ॥ उद्योग 143. 9; मघास्वङ्गारको वक्रः श्रवणे च बृहस्पतिः । भगं नक्षत्रमाक्रम्य सूर्यपुत्रेण

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We find that the Mahābhārate employs two classes of expressions. When it uses words like 'tiṣṭhati' (stands), 'ākramya' (having traversed), 'samvṛtya or samparivārya' (having covered or concealed) it means that the planet was in or very near that nakṣatra. When words meaning 'afflicts (pīḍayati) are employed, the meaning is probably that the planet has only dṛṣṭi on the nakṣatra. It is impossible to say whether the rules and theories about dṛṣṭi or pūrṇa dṛṣṭi and partial dṛṣṭi had been evolved at the time of the Mahābhārata War. If the war was fought about 3101 B. C. or even 1931 B. C. there is nothing to establish that the theories about dṛṣṭi contained even in the Atharvajyotiṣa (which is certainly later than the Vedāṅgajyotiṣa of the Ṛgveda i. e. much later than about 1200 B. C.) were known then. Vide under Venus for further difficulties.

JUPITER— Bhīṣma 3. 14 states that Jupiter was retrograde in Śravaṇa; Bhīṣma 3. 27 states,[1785] 'Both Jupiter and Saturn that had stayed together for a year are near Viśākhā and are both fiery'.

Jupiter cannot stay for one year in one nakṣatra; it traverses 2½ nakṣatras in a year. If at the time of the war Jupiter was near Viśākhā it could not have been near it for a year. Eleven months before that it would have been very near Citrā. If it was near Viśākhā at the time of the war and the Sun was in Jyeṣṭhā, it can hardly be correct to say that seven planets had come together in the sky (there being a distance of about two nakṣatras or about 26

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पीड्यते ॥ भीष्म 3. 14; वक्रानुवक्रं कृत्वा च श्रवणं पावकप्रभः । ब्रह्मराशिं समावृत्य लोहिताङ्गो व्यवस्थितः ॥ भीष्म 3. 18. उत्पल on बृहत्संहिता 1. 10. explains, अनुवक्रं स्पष्टगतित्वम् । वक्रां गतिं त्यक्त्वा पुनः स्पष्टां गतिमाश्रितो अनुवक्रित इत्युच्यते. In these verses there is probably some reference to the verses of Parāśara and Garga quoted by Utpala on Bṛhatsaṁhitā 6. 1-13. गर्ग quoted on 6. 13 says that the nakṣatras from Pūrvāṣāḍhā to Aśvinī are to be of *dakṣiṇa-mārga* and the movements of Mars in them cause danger.

1785. संवत्सरस्थायिनौ च ग्रहौ प्रज्वलितावुभौ । विशाखायाः समीपस्थौ बृहस्पतिशनैश्चरौ ॥ भीष्म 3. 27; बृहस्पतिः संपरिवार्य रोहिणीं बभूव चन्द्रार्कसमो विशांपते ॥ कर्ण 94. 51.

degrees between the two). Even if we hold the meaning to be that Jupiter and Saturn had remained near Viśākhā for one year and are (now at the time of the war) fiery, that does not solve the difficulty. In the first place, it is not a natural construction. This meaning would leave the exact position of the two planets at the time of the war unspecified. But Jupiter and Saturn must be supposed to be in or near Jyeṣṭhā if the Sun was in Jyeṣṭhā at the beginning of the war. If Saturn was in Jyeṣṭhā at the time of the war it could have been one year in Viśākhā about two years before the war. What is the propriety of mentioning Saturn's position two years before the war? The relevant point is to state that position at the time of the war. Therefore it must be held that Bhīṣma 3. 27 states their position at the time of the war and adds one more circumstance that they were there for one year.

Karṇaparva 94. 51 says: 'Bṛhaspati having entirely covered Rohiṇī has become like the Sun and the Moon'. If at the beginning of the war Bṛhaspati was retrograde and was near Viśākhā, it passes one's understanding how in a fortnight it came to Rohiṇī. Mr. Karandikar suggests that Rohiṇī here is the name of Jyeṣṭhā as in the Tai. S. IV. 4. 10. 1-3. Again in this explanation there are several difficulties. There is nothing to show that at the time of the Bhārata war or of the epic Jyeṣṭhā was called Rohiṇī. The Tai. S. does not employ the name Jyeṣṭhā in its list. It speaks of Rohiṇī once as having Prajāpati for its presiding deity and then as having Indra as the presiding deity. Jyeṣṭhā is well-known to the Mahābhārata and the word is employed by it in other passages. Further, if Bṛhaspati had covered Jyeṣṭhā it can hardly be correct or even useful (for the purposes of chronology) to say that Jupiter was near Viśākhā.

VENUS— Bhīṣma 3. 15 states that Venus[1786] having ascended (i. e. occupied) the Pūrvābhādrapadā nakṣatra shines charmingly and it looks up to Uttarābhādrapadā together with (?). The meaning of 'parikramya sahitaḥ' is not at all clear. However the first half is as clear as possible. Venus was in Pūrvā Proṣṭhapadā. If the Sun was in Jyeṣṭhā on Kārtika amāvāsyā, it is impossible that Venus could have been in the 8th nakṣatra from Jyeṣṭhā. Venus is never more than four nakṣatras from the Sun in the sky. This would completely knock on the head the principal statement that seven planets were near each other. Mr. Karandikar in desperation suggests that we should understand Pūrvāṣāḍhā for 'Proṣṭhapade Pūrve' and also that the word 'Proṣṭhapade' was an interpolation inserted by some busy body later on. As I have frequently said above, this is a most unjustifiable way of dealing with the so-called astronomical data in the Mahābhārata. 'Proṣṭhapade Pūrve' can never mean 'Pūrvāṣāḍhā'. In the Tai. S. IV. 4. 10. 1–3, and the Tai. Br. I. 5. 1 and III. 1. 1 the word Proṣṭhapadā is expressly employed for Pūrvā Bhādrapadā. Why should one word in a verse be held to be interpolated? Is it because it does not agree with one's hypothesis? In Śalya 11. 18 Venus and Mars are said to be in conjunction with the Moon. If the war started on Bharaṇī as the Bhāratasāvitrī says, then at the time of the mace-duel the moon might be in Jyeṣṭhā and therefore both Mars and Venus will have to be in Jyeṣṭhā. But this is opposed to two of the passages cited above referring to the position of Mars. If the war began on Jyeṣṭhā and Kārtika amāvāsyā, then on the 18th day the moon will be in Puṣya or Āśleṣā and both Venus and Mars would have to be in one of these two. In any case, if Venus was in Pūrvā-bhādrapadā at the beginning of the

1786. शुक्रः प्रोष्ठपदे पूर्वे समारुह्य विरोचते । उत्तरे तु परिक्रम्य सहितः समुदीक्षते ॥ भीष्म 3. 15.

war, on the 18th day it can neither be in Jyeṣṭhā, nor in Puṣya nor in Āśleṣā. Besides, it is debatable whether Bhīṣma 3. 16 (where 'śveto grahaḥ' is mentioned) refers to Venus or not. Venus is often called 'Sita' in ancient astronomical works (e. g. in Bṛhat-saṁhitā 9. 42, 45).

SATURN— We have four statements about Saturn. In Udyoga 143. 8 we read,[1787] 'A refulgent and malignant planet, Saturn, afflicts the nakṣatra presided over by Prajāpati (i. e. Rohiṇī)'; Bhīṣma 2. 32 states, 'Saturn afflicts Rohiṇī': Bhīṣma 3. 14 says, 'the nakṣatra presided over by Bhaga is covered and afflicted by Saturn'; Jupiter and Saturn are near Viśākhā (Bhīṣma 3.27 considered above). In the first three passages the root 'pīḍ' occurs and therefore it is possible to argue that some kind of aspect (*dṛṣṭi* or *vedha*) of the nakṣatra mentioned in the text is meant. But in the third passage both 'ākramya' and 'pīḍyati' are used about the same nakṣatra. This makes that passage inexplicable in the usual way. The 'prājāpatya nakṣatra' must be Rohiṇī as in the 2nd passage Rohiṇī is expressly named. All authorities agree that Prajāpati is the deity of Rohiṇī. 'Prājāpatya nakṣatra' cannot be taken to mean Mūla, since the presiding deity of Mūla is 'pitaraḥ' in Tai. S. IV. 4. 10. 1–3 and Nirṛti (in the Tai. Br. I. 5. 1 and in the Vedāṅga-jyotiṣa) and Prajāpati only in some later works. Bhaga is the presiding deity of Uttarā Phalgunī in the Tai. S. IV. 4. 10. 1–3 and Tai. Br. I. 5. 1, and III. 1. 1, while in the Vedāṅgajyotiṣa (Ṛgveda, verse 25), Viṣṇu Dh. S. (78. 16), Śān. Gṛ. (I. 26. 9, SBE vol. 29 p. 53) Bhaga is the deity of Pūrvā Phalgunī. The 4th passage about Saturn being near Viśākhā has been already dealt with under Jupiter.

1787. प्राजापत्यं हि नक्षत्रं ग्रहस्तीक्ष्णो महाद्युतिः। शनैश्चरः पीडयति पीडयन् प्राणिनोऽधिकम्॥ उद्योग 143. 8; रोहिणीं पीडयन्नेष स्थितो राजन् शनैश्चरः। भीष्म 2. 32; भगं नक्षत्रमाक्रम्य सूर्यपुत्रेण पीड्यते। भीष्म 3. 14.

The above detailed statement about the astronomical passages of the Mahābhārata will induce any unbiassed reader who has no axe to grind that they are hopelessly inconsistent and that no certain chronological conclusion can be drawn therefrom. In the above discussion I have generally not cited the various explanations indulged in by several scholars, as that would have involved me in a very lengthy discourse without any adequate benefit. To me it appears probable that the final redactor of the Mahābhārata had two or more sets of astronomical data about the war before him and without trying to examine and sift them he included them all in his work. The Bhārata-sāvitrī probably represents one (and a later) tradition about the positions of the planets at the time of the war. As I hold that either the Mahābhārata passages on the positions of the planets were interpolated at a very late stage or are hopelessly inconsistent I deem it unnecessary to enter upon an examination of the mathematical calculations made by several scholars to find out the date of the Bhārata war from the shifting of the solstices and the position of the planets.

Since only 5046 years have elapsed (in 1945 A. D.) from the beginning of the Kali age and as Kaliyuga extends to 432000 years according to Paurāṇic computations we are just on the threshold of the Kaliyuga and it is beyond one's comprehension to visualize what will happen towards the end of the vast period of about 427000 years that are still to pass before Kaliyuga ends. It is very small consolation to read in the Purāṇas in a prophetic strain that at the end of that colossal period Viṣṇu will be incarnated as Kalkin in a village Śambhala, will destroy all Mlechhas, śūdra kings and heretics and will establish dharma, so that the Kṛta age will then be ushered in. Here again as in almost all matters there are differences in the legend. The Vāyu (58. 75-90) and the Matsya (144. 50-64) state that it will be Pramati Bhārgava who will be the *avatāra* of Viṣṇu and uproot the Mlechhas, heretics and śūdra kings, while Vāyu 98. 104-110 and 99. 396-7, Vanaparva 190. 93-97, Bhāgavata XII. 2. 16-23 state that Kalkin will conquer the Mlecchas, will become a universal emperor (*cakravartin*) of the *dharmavijayin* type and will start the Kṛta age. In some passages he is called Kalkī (nom. of Kalkin) as in Vanaparva 190. 93, Brahma 213. 164, Vāyu 99. 396, Matsya 47. 248, Nṛsiṁha 54. 3; while in others as Kalkiḥ (nom. of Kalki) as in Vāyu 98. 104, Kalki 2. 28, Bhāgavata XII. 2. 16, Matsya 47. 251. In

some passages he is said to be the son of a brāhmaṇa Viṣṇuyaśas who will be the head[1788] of the village called Śambhala (Bhāgavata XII. 2. 16, Viṣṇupurāṇa IV. 24. 26, Agni 16. 8, Nṛsiṁha 54. 3, Kalkipurāṇa 2. 34), while in other passages he is himself styled Viṣṇuyaśas (Vāyu 98, 104, Vanaparva 190. 93, Brahma 213. 164, Viṣṇudharmottara I. 74. 40).[1788a] In some places

1788. शम्भलग्राममुख्यस्य ब्राह्मणस्य महात्मनः । भवने विष्णुयशसः कल्किः प्रादुर्भविष्यति ॥ अश्वमाशुगमारुह्य देवदत्तं जगत्पतिः । असिना साधुदमनमष्टैश्वर्यगुणान्वितः । ...... यदावतीर्णो भगवान्कल्किर्धर्मपतिर्हरिः । कृतं भविष्यति तदा प्रजासूतिश्च सात्त्विकी ॥ भागवत XII. 2. 16-23.

1788a. Various efforts have been made about finding germs of history in the legend of Kalkin. In I. A. vol. 48 pp. 123-128 Prof. H. B. Bhide tries to show how Jain authorities about Kalkin are conflicting. Mr. K. P. Jayaswal in I. A. vol. 46 (for 1917) p. 145 holds that Kalkin must be identified with the great hero Yaśodharman who ruled over India from the Brahmaputrā to the Western Ocean and from the Himālaya to Mahendra and who conquered the Hun Mihirakula and made him pay homage to his feet as stated in the Mandasor Inscription (vide Gupta Ins. p. 149). Prof. Pathak on the other hand relying upon certain Jaina sources identifies Kalkin with Mihirakula himself (I. A. for 1918 at p. 19). Otto Schrader in Brahmavidyā vol. I. pp. 17-27 discusses how the names Kalkin or Kalki came to be given to the saviour of India from Mlecchas, heretics and the like. Kalka means 'sin' or 'sediment' and Karka means 'a white horse'. Therefore he thinks that Kalkin is a form of *karkin* (one riding a white horse). Vide also N. I. A. vol. IV. pp. 337-343 (on Kalki from the Kalkipurāṇa). It is probable that the dismal accounts of Kaliyuga were put forth in the first centuries of the Christian era when the ancient varṇāśrama-dharma had suffered a great set-back owing to the ascendancy of Buddhism and Jainism and the invasions of foreigners like the Śakas and Hūṇas, that when Yaśodharman defeated the great Hun invader Mihirakula, people believed that the dark ages were at an end and that an era of perfect dharma was at hand. That Mihirakula was a most ruthless and bloodthirsty invader who in his long career of 70 years slaughtered myriads of men and women is stated by the Rājataraṅgiṇī I. 310 (which speaks of him as *trikoṭihan*) and 322 (which narrates that he slaughtered three crores of women of respectable birth together with their husbands, brothers and sons). Hiouen Chwang (Beal's B. R. W. W. pp. 171-172) narrates that Mihirakula either slaughtered or made slaves of nine lakhs of people in Gandhāra. Passages in a prophetic vein were added about the time of Yaśodharman to those already existing about the decline of dharma in Kaliyuga. This will of course necessitate that all passages about Kalkin in any work whatever were put in later than about 530 A. D. There are two theories as to who defeated Mihirakula. Hiouen Chwang's account gives the name of the victor as Bālāditya of Magadha (vide Beal's B. R. W. W. part I. pp. 167-171). On the other hand there are three inscriptions, the

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he is said to have already flourished (Vāyu 98. 111, Matsya 47. 255), in other places the texts employ the future (Vāyu 99. 396, Bhāgavata XII. 2. 16). This last discrepancy is probably due to the fact that the writers sometimes forget their role of prophets. Further, it has to be remembered that according to the Purāṇas the four yugas (and therefore the Kalki *avatāra*) have been repeated again and again. The Kalki-purāṇa (I. 2. 33 and I. 3. 32–33) states that Kalki was a contemporary of Viśākhayūpa king of Māhiṣmati, while the Vāyu (99. 312–314), Matsya (272. 4) and Viṣṇu (IV. 24) state that Viśākhayūpa was the 3rd of the Pradyota dynasty that preceded the Śiśunāga dynasty. Though the Kalki-purāṇa several times uses the past tense about Kalki, yet at the very beginning it says (I. 10) that what is narrated is an ākhyāna (story) of the future. It is interesting to note that in the Parṇālaparvata-grahaṇākhyāna[1788b] of Jayarāma composed about 1673 A.D. Bahlolkhan,

(*Continued from the last page*)

Gwalior stone Inscription of Mihirakula (Gupta Ins. No. 37 p. 161), the Mandasor stone Pillar Inscription of Yaśodharman (Gupta Ins. No. 33 p. 142), and the Mandasor Stone Inscription of Yaśodharman Viṣṇuvardhana (Gupta Ins. No. 35 p. 150) in none of which is Bālāditya referred to. But in the Sarnath Stone of Prakaṭāditya, son of Bālāditya, another Bālāditya is referred to (Gupta Ins. No. 79 p. 284). In the Mandasor Stone Pillar Inscription (Gupta Ins. p. 147) occur these words relating to Mihirakula 'नीचैस्तेनापि यस्य प्रणतिभुजबलावर्जनाक्लिष्टमूर्ध्ना चूडापुष्पोपहारैर्मिहिरकुलनृपेणार्चितं पादयुग्मम्'. In the Mandasor Stone Ins. (Gupta Ins. No. 35 at p. 153) lines 4 and 5 read अथ जयति नरेन्द्रः श्रीयशोधर्मनामा। आजौ जितो विजयते जगतीं पुनश्च श्रीविष्णुवर्धननराधिपतिः स एव ॥. Dr. Fleet held that Yaśodharman and Viṣṇuvardhana were different, but the reasons he assigns are unconvincing and Jayaswal appears to be right in holding that Viṣṇuvardhana is the same as Yaśodharman (in 'Imperial History' pp. 39–41) and that Viṣṇuvardhana was the overlord of Bālāditya. It appears likely that the compilers of the extant Purāṇas combined the two principal parts of the two names Viṣṇuvardhana and Yaśodharman and that the conqueror of the Mlecchas was said to be Viṣṇuyaśas. Vide I. H. Q. vol. XII p. 531 and vol. XV pp. 302–306 for Yaśodharman, Viṣṇuvardhana and Mihirakula and Dr. R. G. Basak in 'History of North-East India' (1934) pp. 97–101 (who holds that Yaśodharman and Viṣṇuvardhana were two different Kings). Pargiter's 'Ancient Indian tradition' and 'Dynasties of the Kali age' and Dr. Pradhan's 'Chronology of Ancient India' may be read with advantage in connection with the historic material in the Purāṇas.

1788b. श्रूयते किल हिन्दूनां शास्त्रे कैश्चिदुदाहृतम्। कल्की विष्ण्वताराणां दशमः सम्भविष्यति ॥ छेत्स्यते तेन सर्वत्र व्याप्तं यावनमण्डलम् । तस्यैव कल्किनस्तावदसावग्रे समागतः । श्रुतो वै प्रतिभात्यस्मान्यतोऽस्मिन्निधनोद्यतः ॥ पर्णालपर्वतग्रहणाख्यान V. 6–8, published by भारत-इतिहास-संशोधक-मण्डल at Poona, 1923.

commander-in-chief of the Bijapur army, is made to say to Khawaskhan, the Vazir, as follows, 'In the Hindu śāstras some say that Kalkin, the 10th avatāra of Viṣṇu will be born and he will destroy the hordes of Yavanas. Shivaji appears to be the first harbinger of that Kalkin'.

Even though the Purāṇas are carried away by their over-zeal in condemning the moral and physical decline of the Kali age, almost all of them exhibit no verses about matters forbidden in the Kali age. We have to see when the topic of *Kalivarjya* attained prominence and what the matters are that were once practised by people without objection and that later on came to be prohibited or condemned.

The Āp. Dh. S. (II. 6. 14. 6-10) condemns the practice of giving all or most of the ancestral property to the eldest son as opposed to śāstras. The Āp. Dh. S. (II. 10. 27. 2-6), after referring to the view of some that a woman when being married is given to the whole family of the bridegroom, condemns the practice of *niyoga*.[1789] Both these practices (of *uddhāravibhāga* and of *niyoga*) are among those included in the texts on Kalivarjya. Among the earliest references in the smṛtis to practices once current, but forbidden in the Kali age is a passage of Bṛhaspati quoted by Aparārka p. 97, where *niyoga* and the numerous secondary sons are said to be impossible owing to the decadence[1790] of spiritual power among men of the Dvāpara and Kali ages. Aparārka p. 739 and the D. M. quote a passage of Śaunaka to the effect that sons other than the aurasa or dattaka are not allowed in the Kali age[1791]. Prajāpati (verse 151) refers[1792] to the ancient practice of offering meat and wine in śrāddhas, but prescribes that these should be eschewed in the Kali age. Vyāsa[1793] quoted in the Nirṇayasindhu and other works forbids

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1789. सगोत्रस्थानीयां न परेभ्यः समाचक्षीत । कुलाय हि स्त्री प्रदीयत इत्युपदिशन्ति । तदिन्द्रियदौर्बल्याद्विप्रतिपन्नम् । अविशिष्टं हि परत्वं पाणेः । तद्व्यतिक्रमे खलु पुनरुभयोर्नरकः । आप. ध. सू. II. 10. 27. 2-6.

1790. Vide H. of Dh. vol. II, p. 603 *n*. 1418 for the quotation.

1791. अत एव कलौ निवर्तन्ते इत्यनुवृत्तौ शौनकेनोक्तं-दत्तौरसेतरेषां तु पुत्रत्वेन परिग्रहः-इति । अपरार्क p. 739. This is cited as from आदित्यपुराण in several other works.

1792. मद्यमत्स्ययुतं श्राद्धे कलौ तत्तु विवर्जयेत् । मांसान्यपि हि सर्वाणि युगधर्मक्रमाद् भवेत् ॥ प्रजापति 151.

1793. चत्वार्यब्दसहस्राणि चत्वार्यब्दशतानि च । कलेर्यदा गमिष्यन्ति तदा त्रेतापरिग्रहः । संन्यासस्तु न कर्तव्यो ब्राह्मणेन विजानता ॥ q. by भट्टोजि in टीका on चतुर्विंशतिमत p. 55. Vide H. of Dh. vol. II. p. 953 *n*. 2481 for other references to this text.

the setting of the three vedic fires and of resorting to sannyāsa after 4400 years of Kali. The Laghu-Āśvalāyana[1794] smṛti (21. 14–15) states that the two kinds of sons called Kuṇḍa and Golaka were permitted in former ages and had the saṁskāras performed on them, but are condemned in the Kali age. Viśvarūpa and Medhātithi, it is worth noting, do not quote a single verse about Kalivarjya. On Yāj. III. 30 Viśvarūpa tries to reconcile Parāśara III. 5 (saying that a brāhmaṇa who is learned in the Veda and keeps the sacred Vedic fires becomes free from impurity in a day) with Parāśara III. 8 (that for ten days on impurity due to birth or death the food of that family becomes unpartakable for others). He does not accept the idea that the period of impurity is only one day for a learned man, but explains that Parāśara III. 5 is only an *arthavāda* meant for glorifying the study of Veda and the keeping of sacred fires. Among later commentators it is stated that the narrowing down of the periods of impurity on the ground of Veda study is forbidden in the Kali age. As this explanation is not offered by Viśvarūpa it is not unreasonable to infer that Viśvarūpa was not aware of the passage on this point quoted from the Ādityapurāṇa. Medhātithi[1795] also (on Manu IX. 112) refers to the opinion of some that the smṛti passages about niyoga and uddhāra-vibhāga were applicable only in bygone ages, since smṛtis are restricted to certain ages (vide Manu I. 85); but he refutes that view and explains Manu I. 85 by saying that the meaning is that the dharmas (i. e. qualities or natures of things) change from age to age as they do from season to season. From this it is clear that he did not accept that certain practices current in one age were forbidden in others. Vijñāneśvara[1796] quotes a single verse which condemns the practice of niyoga, the giving of a special share to the eldest son and the killing of a cow in a sacrifice as not allowable in the Kali age. That

1794. संस्कार्यौ विधिवत्प्रोक्तौ मुनिभिः कुण्डगोलकौ । युगान्तरे स धर्मः स्यात् कलौ निन्द्य इति स्मृतः ॥ परिवित्त्यां सुतः कुण्डो व्यभिचारसमुद्भवः । गोलको विधवायां च निषिद्धः स्यात्कलौ स्मृतः ॥ लघ्वाश्वलायन 21. 14–15.

1795. Vide *n*. 1197 above for मेधातिथि's remarks इयमुद्धारनियोग ... तदे-तदुपेक्षणम् ।. Then मेधा. continues : न ह्येवंविधः कालनियमः क्वचिदपि श्रूयते सायंप्रातः-पर्वादिनियमवदत्र । यच्चान्ये कृतयुगे धर्मा इति तत्प्रथम एव व्याख्यातम् । मेधा. on मनु IX. 112. On मनु I. 85 अन्ये कृतयुगे धर्माः he says : धर्मशब्दो न यागादिवचन एव किं तर्हि पदार्थगुणमात्रे वर्तते । ... यथा वसन्तेऽन्यः पदार्थानां स्वभावोऽन्यो ग्रीष्मेऽन्य एव वर्षास्वेवं युगेष्वपि.

1796. Vide above p. 628 *n*. 1198 for the verse यथा नियोगधर्मो नो.

verse is said by the Sm. C. II. p. 266 to have occurred in the Saṅgraha (i. e. the work called Smṛtisaṅgraha). The Sm. C. quotes a verse of Kratu which forbids four acts in Kali, viz. niyoga, remarriage of a married girl, killing a cow in sacrifices and the taking of a jar.[1797] The Nāradīya-mahāpurāṇa contains four verses about Kalivarjya stating that certain practices which were once allowed are forbidden in the Kali age, viz. sea voyage, the carrying of a jar of water, marrying a girl of a class lower than one's own, *niyoga*, killing of an animal in Madhuparka, offering of flesh in śrāddhas, the stage of a forest hermit, remarriage of a married girl when the marriage was not consummated, perpetual student-hood, human sacrifice, horse sacrifice, starting on the great journey, the sacrifice of a cow[1798]. Aparārka (pp. 15, 63) quotes one verse and a half from the Brahmapurāṇa about certain Kalivarjyas viz. perpetual studenthood, the carrying of a *kamaṇḍalu*, marriage with a sagotra or sapiṇḍa girl, the killing of a cow, human sacrifice, horse sacrifice, drinking intoxicating liquors[1799]. This could not be traced to the Brahmapurāṇa, but the Prāyaścitta-tattva (p. 520) ex-

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1797. क्रतुरपि । देवराच्च सुतोत्पत्तिः दत्ता कन्या न दीयते । न यज्ञे गोवधः कार्यः कलौ च न कमण्डलुः ॥ q. in स्मृतिच. I. p. 12, भट्टोजि's टीका on चतुर्विंशतिमत p. 49 कलिवर्ज्यवि. folio 1, समयप्रकाश p. 261.

1798. समुद्रयात्रास्वीकारः कमण्डलुविधारणम् । द्विजानामसवर्णासु कन्यासूपयमस्तथा ॥ देवराच्च सुतोत्पत्तिर्मधुपर्के पशोर्वधः । मांसादनं तथा श्राद्धे वानप्रस्थाश्रमस्तथा ॥ दत्ताक्षतायाः कन्यायाः पुनर्दानं परस्य च । नैष्ठिकं ब्रह्मचर्यं च नरमेधाश्वमेधकौ ॥ महाप्रस्थानगमनं गोमेधश्च तथा मखः । एतान् धर्मान् कलियुगे वर्ज्यानाहुर्मनीषिणः ॥ नारदीयपुराण, पूर्वार्ध, 24. 13–16. These are quoted as from the बृहन्नारदीयपुराण in the उद्वाहतत्त्व p. 112, the निर्णयसिन्धु p. 367 (reads समुद्रयातुः स्वीकारः), कलिवर्ज्यवि. folio 2 (reads मांसदानं and समुद्रयातुस्वीकारः); the स्मृत्यर्थसार p. 2 contains the half verses समुद्रयात्रा ... धारणम्, दत्ता ... परस्य च, and महाप्रस्थानगमनं गोपशुश्च सुराग्रहः (but without name). The मद. पा. p. 16 has the first half (without name) and also the half दीर्घकालं ब्रह्मचर्यं नरमेधाश्वमेधकौ.

1799. दीर्घकालं ब्रह्मचर्यं धारणं च कमण्डलोः । सगोत्राद्वा सपिण्डाद्वा विवाहो गोवधस्तथा । नराश्वमेधौ मद्यं च कलौ वर्ज्यं द्विजातिभिः ॥ इत्यादिना मध्यादेर्ब्रह्मपुराणादौ सामान्यतो वर्ज्यत्वेनाभिहितत्वात् । अपरार्क p. 15, स्मृतिच. I. p, 12, परा. मा I. part 1 p. 133. The स्मृतिच., हेमाद्रि III. 2 (p. 666), मदनरत्न and निर्णयसिन्धु (p. 367) read गोत्रान्मातुः सपिण्डाच्च विवाहः which means 'marriage with a daughter of the paternal aunt or with a girl who is a sapiṇḍa of one's mother i. e. maternal uncle's daughter.' The स्मृतिच. attributes these verses to आदित्यपुराण while निर्णयसिन्धु p. 286 ascribes them to आदिपुराण. The कलिवर्ज्यविनिर्णय reads गोत्रान्मातृसपिण्डात्, notices also the reading गोत्रान्मातुः सपिण्डात् and has a long note on this, citing and refuting various views. According to the मांसतत्त्वविवेक of विश्वनाथ p. 27 even the कल्पतरु quoted this ब्रह्मपुराण passage (reading गोत्रान्मातृसपिण्डाद्वा).

pressly states that these were cited from the Brahmapurāṇa in the works of Halāyudha, Śūlapāṇi and in the Gṛhastharatnākara (i. e. from about the 12th century onwards). Aparārka (p. 98) quotes another passage from the Brahmapurāṇa[1800], which condemns remarriage of women, niyoga, independence of women, on the ground that men in the Kali age are sinners. Aparārka (p. 233) quotes two verses from a smṛti (without name) the first of which prohibits six acts, viz. killing a cow in sacrifice, niyoga (of husband's brother), the performance of *sattras*, taking a water jar, use of wine (in sautrāmaṇi), being an ascetic (of the *paramahaṁsa* type) and the second prohibits five, viz. human sacrifice, cow sacrifice, the taking of a kamaṇḍalu, niyoga, and the remarriage of a girl whose marriage has not been consummated. Aparārka (p. 233) quotes a passage from the Mārkaṇḍeya recommending the offering of a golden vessel in place of the cow in Madhuparka and stating that Bhṛgu laid down that no animal was to be sacrificed in Kali. The Sm. C. (I. p. 12) quotes a Purāṇa passage that 'the remarriage of a married woman, special share to the eldest son, the killing of a cow, niyoga and the taking of a kamaṇḍalu—these five are to be avoided in Kali[1801]. Hemādri and the Sahyādri-khaṇḍa state, ' Agnihotra, the killing of a cow, *sannyāsa*, offering of meat in śrāddha and raising of a son by the husband's brother—these five were[1802] to be avoided in Kali. Hemādri in Dānakhaṇḍa quotes a passage from the Garuḍapurāṇa in which seven matters are mentioned as forbidden in Kali, viz. Aśvamedha, Gosava, human sacrifice, Rājasūya, remarriage even of a girl whose first marriage was not consummated, the carrying of a kamaṇḍalu and procreation of a son on a widow by her husband's brother. The Smṛtyarthasāra (p. 2) mentions twenty-six Kalivarjyas without expressly citing the name of any work. In the Sm. C., the Caturvargacintāmaṇi of Hemādri (III. part 2 p. 666), the Par. M. I. part 1 pp. 131-137, the Madanapārijāta (pp. 15-16),

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1800. स्त्रीणां पुनर्विवाहस्तु देवरात्पुत्रसन्ततिः । स्वातन्त्र्यं च कलियुगे कर्तव्यं न कदाचन । यतः पातकिनो लोके नराः सन्ति कलौ युगे । ब्रह्मपुराण q. by अपरार्क p. 98.

1801. पुराणेपि । ऊढायाः पुनरुद्वाहं ज्येष्ठांशं गोवधं तथा । कलौ पञ्च न कुर्वीत भ्रातृजायां कमण्डलुम् । स्मृतिच. I. p. 12. This is quoted from the आदिपुराण in the मदनरत्न. Vide *n*. 1700 above and कलिवर्ज्यवि.; स्मृतिमु. (वर्णाश्रम) p. 13 quotes it as from पराशर.

1802. अग्निहोत्रं गवालम्भं संन्यासं पलपैतृकम् । देवराच्च सुतोत्पत्तिं कलौ पञ्च विवर्जयेत् ॥ स्मृतिमु. (वर्णाश्रम p. 176), यतिधर्मसंग्रह p. 2, सह्याद्रिखण्ड (उत्तरभाग chap. V. 64-65). The first two read अग्न्याधेयम्. The निर्णयसिन्धु p. 370 quotes the verse as a निगम.

Madanaratna (samayoddyota), the Udvāha-tattva (p. 112), the Samaya-mayūkha, the Samayaprakāśa of Mitramiśra (pp. 261-263), the Nirṇayasindhu (III, pūrvārdha at end), Bhaṭṭoji on Caturviṁśati-mata, the Smṛtimuktāphala (varṇāśrama p. 13), the Smṛtikaustubha, the Dharma-sindhu (pp. 357-358) and some other works quote long passages from a purāṇa (which in some of them is specified as the Ādityapurāṇa) that mentions about 50 Kalivarjyas[1803]. There is a work called Kalivarjyavinirṇaya or Kalivarjyanirṇaya composed by Dāmodara elder brother of Nīlakaṇṭha (first half of 17th century A. D.), who in his Samaya-mayūkha refers to it. It quotes the Ādityapurāṇa, Brahma-purāṇa and other texts that are quoted here from Hemādri and other older digests[1804].

In the passage quoted the several Kalivarjyas are not arranged on any systematic basis. Here, first of all a few Kalivarjyas that have a bearing on law will be mentioned and then the rest will be taken up one after another in the order in which they appear in the extract and lastly those that do not appear in that extract will also be dealt with. The first verse states that certain actions were discarded by the wise though this was unauthorized (by śruti or smṛti) after arriving at a convention among themselves through fear of the loss of dharma (if they were persisted in), because in the Kali age there is absence of good men. The last verse and a half again state that at the beginning of the Kali great men arrived at certain conventions and discarded certain actions in order to guard the people (against harm and sin) and (it is well known) that the conventions of good men are authoritative like Veda[1805].

1. Giving a larger share of ancestral property or the whole of it to the eldest son (this is called *jyeṣṭhāṁśa* or *uddhāra* or *uddhāravibhāga*). Vide pp. 624-631 above for this.[1806]

1803. Vide Appendix for the passage.

1804. A ms. of this work existing in the Central Library at Baroda was very kindly lent to me through the Bhandarkar Oriental Institute at Poona. There are eleven folios with ten lines on each side and about 40 letters in each line.

1805. Compare Āp. Dh. S. I. 1. 1. 2-3 'धर्मज्ञसमयः प्रमाणम् । वेदाश्च' and Vas. I. 4-5.

1806. The earliest reference in English to Kalivarjya matters is found in a translation of the passage of the Samayoddyota section of the Madanaratna contained in Sir William Jones' Works vol. VIII (ed. of 1807), General Note; vide also Strange's Hindu Law, vol. II pp. 164-174 for reference in a modern work on Hindu Law to several topics of Kalivarjya.

2. Appointing the husband's brother (or a sagotra &c.) to raise issue on the wife of a sonless man. This is called *niyoga* and has been dealt with at length in H. of Dh. vol. II. pp. 599–607. It may be added here that in the K. V. N. there is a long discussion on the question whether an elder brother of the deceased could have been appointed to raise issue on his younger brother's widow and gives it as the opinion of some that he could not be so appointed, but that only a younger brother could be appointed to raise issue on his elder brother's widow. They rely on the Mit. on Yāj. I. 68 where 'devara' is paraphrased as 'kanīyān bhrātā'. The K. V. N. (folio 5 b and 6 a) relying on Manu IX. 62 and the words of the Mit. on Yāj. II. 127 (where Manu IX. 69–70 are cited and explained as 'devaras-tasya jyeṣṭhaḥ kaniṣṭho vā) holds that any brother whether elder or younger than the husband could be appointed.

3. The admission of several kinds of secondary sons other than the aurasa and the dattaka. For this vide above pp. 647–653.

4. Remarriage of widows. This subject has been dealt with in H. of Dh. vol. II. pp. 608 ff. Some texts such as Vas. 17. 74 make a distinction between the remarriage of a woman whose marriage was not consummated and of a woman whose marriage was consummated, remarriage being allowed in the first case but not in the 2nd. The Kalivarjya texts forbid remarriage in both cases.[1807]

5. Intercaste marriages. This subject has been treated of in H. of Dh. vol. II. pp. 447–451. It has been shown by me above (pp. 599–600) that the decisions in 46 Bom. 871 and 55 Bom. 1 are based upon a misunderstanding about the real views of Nīlakaṇṭha.

6. Marriage with sagotra girls or with girls that are sapiṇḍas of the mother (such as the maternal uncle's daughter). Vide H. of Dh. vol. II. pp. 452–478 for prohibition on the ground

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1807. पाणिग्राहे मृते बाला केवलं मन्त्रसंस्कृता । सा चेदक्षतयोनिः स्यात्पुनः संस्कारमर्हति ॥ वसिष्ठ 17. 74. The half verse बालिकाक्षतयोन्योस्तु वरेणान्येन संस्कृतिः refers to both kinds of widows viz. बालिका (whose marriage is not consummated) and क्षतयोनि (whose marriage is consummated). The reading of हेमाद्रि and कालिवर्ज्यवि. (folio 1) 'बालिकाक्षतयोन्यास्तु (or—न्याश्च) is to be understood as referring only to the first kind (बालिका चासौ अक्षतयोनिश्च). The निर्णयसिन्धु (p. 368) reads बालायाः क्षतयोन्यास्तु.

of sapiṇḍa relationship, pp. 497 ff. for prohibition on the ground of gotra and pp. 458–463 for marriage with maternal uncle's daughter. The custom of marrying the maternal uncle's daughter has persisted to this day in many castes in spite of the inclusion of it among Kalivarjyas. An inscription at Nāgārjunikoṇḍa (3rd century A. D.) shows that Vīrapuruṣa-datta, son of Śānta-mūla, married three daughters of his paternal aunts (E. I. vol. XX. p. 1).

7. Slaying a brāhmaṇa who comes as an ātatāyin in a properly conducted fight. Vide H. of Dh. vol. II. pp. 148–151 and p. 517 above for this subject.

8. Awarding of fines against witnesses who depose in disputes between father and son.[1808] It has already been seen (p. 299) how ordinarily suits between husband and wife, father and son were not encouraged in ancient India. But when such a dispute came to the king's notice he could take action *suo motu*, as Nār. includes 'pitāputra-vivāda' among the miscellaneous matters (prakīrṇaka verse 3) which the king was to set in motion. Even in ancient times this rule must not have been strictly enforced. As time went on and separation of father and son became frequent the rule must have appeared to be unreasonable. Vide Mit. on Yāj. II. 32 referred to above in n. 418. Yāj. II. 239 (= Matsya 227. 198) prescribed a fine of 3 paṇas for those who (instead of composing the quarrel between father and son and being able to do so) undertake to be witnesses. Viśvarūpa read 'a fine of two hundred paṇas'. Viṣṇu Dh. S. V. 120 prescribes a fine of ten paṇas. This shows that at the time of the Matsyapurāṇa this act was probably not included among Kalivarjyas.

9. Taking (or stealing) of corn even from one whose actions are lowly (i. e. even from a śūdra), when a brāhmaṇa has been without food for six times (i. e. three days). Gaut. 18. 28–29, Manu XI. 16 and Yāj. III. 43 provide that when a brāhmaṇa cannot earn his maintenance in a season of distress even in any one of the ways indicated in Yāj. III. 42 and has been hungry for three days he may steal or take away one day's food even from a low person such as a śūdra. It should be noted that this Kalivarjya text pointedly repeats the very

1808. पितापुत्रयोर्विरोधे साक्षी न तिष्ठेत्। यस्तिष्ठेत्स दण्ड्यस्त्रीन् कार्षापणानन्यथान्तरे तिष्ठत्सोऽप्यष्टशतं दाप्यः। शङ्खलिखितौ q. by अपरार्क p. 824.

words of Manu XI. 16 'bhaktāni ṣaḍ-anaśnatā ... hartavyaṁ hīnakarmaṇaḥ). In ancient times theft of such a minor nature was permitted when the brāhmaṇa was famished. But later times took a stricter view of the matter.

10. 'The admission to intercourse of a brāhmaṇa who undertakes a sea voyage, even though he may have performed the penance prescribed for the same' (*l.* 7 in the appendix). Here the word used is 'dvijasya'. It may mean either any person of the three higher castes or a brāhmaṇa. If a man who has made a sea voyage took prāyaścitta he expiated only the sin, but did not become fit, according to this dictum, to be associated with by others. Whether the Vedic Aryans knew the sea has been doubted. Vide 'Vedic Index' on 'samudra', vol. II. pp. 431–433. The Nirukta II. 10 refers to the fact that a doubt arises whether the word 'samudra' in a particular vedic verse refers to the sea or to the sky. In some verses as in Ṛg. X. 98. 5 'he discharged divine rain waters from the higher to the lower samudra' both the meanings of 'samudra' (viz. sea, sky) are pointedly brought out. Vide also Ṛg. VII. 6. 7 (ā samudrād-avarād-ā parasmāt). In Ṛg. VII. 95. 2 Sarasvatī is mentioned as going from the mountains to the sea. In Ṛg. X. 136. 5 the two seas, Eastern and Western, are mentioned (ubhau samudrāvā kṣeti yaśca pūrva utāparaḥ). In Ṛg. VIII. 6. 4 it is said, 'all people bend down to him, as the sindhus (rivers) flow to the Ocean.' Ṛg. I. 116. 4–5, X. 39. 4 and X. 143. 5 refer to the story that Aśvins saved Bhujyu from the waters of the sea.[1809] The Atharvaveda XI. 2. 25 refers to eastern sea and northern sea. There is no doubt that in the Brāhmaṇas the sea was well-known. The Tai. Br. II. 2. 5. 6 remarks, 'there is no end to desire and also to samudra' (neva hi kāmasyāntosti na samudrasya). The Ait. Br. (40. 2) remarks 'just as the sea stands surrounding the earth' (tābhī rājānam parigṛhya tiṣṭhati samudra iva bhūmim). It has already been seen that among the five practices peculiar to the north the Baud. Dh. S. (I. 1. 22) enumerates sea voyage (samudra-saṁyāna) as the last and condemns it. Baud. (II. 1. 51) places sea voyage at the head of grave sins (*patanīyāni*) along with misappropriating a brāhmaṇa's wealth kept as a deposit. The Mit.

1809. Vide 'Vedic Hymns' by Max Muller (S. B. E. vol. 32 pp. 57–62) for a note on the question whether the Indians of 'the Vedic age' knew the surging sea (terrestrial).

on Yāj. III. 288 quotes the sūtra of Baud. Manu (III. 158 and 166–167) provides that a brāhmaṇa who had been on a sea voyage was sinful and was not to be invited at a śrāddha. But it is clear that Manu does not say that such a brāhmaṇa altogether loses caste or that he becomes altogether unfit to be associated with; all that Manu provides is that such a brāhmaṇa became unfit for invitation at a śrāddha. The Auśanasasmṛti (IV. pp. 525–526) declares that those who sell the Veda, who marry a widow, who undertake a sea voyage are *patita* and are not to be invited at a śrāddha. These passages show that the prohibition against sea voyage affected only brāhmaṇas and even then they did not apparently become altogether unfit to be associated with. That brāhmaṇas crossed the ocean and went to such distant countries as Siam, Cambodia, Java, Sumatra and Borneo can be easily proved[1810]. E. I. vol. 17 p. 314 gives references to inscriptions from Borneo to show that brāhmaṇas from India migrated to that country about 400 A. D. That kings and merchants undertook sea voyages is also clear from several considerations. The Bāveru Jātaka (vol. III No. 339, Fausböll) tells us that merchants from Benares went to Babylon in order to sell Indian goods. The 'Questions of Milinda' S. B. E. vol. 36 p. 269 refers to a ship-owner voyaging by sea to distant countries[1811]. The Rājataraṅgiṇī refers to the sea voyage of an envoy of king Jayāpīḍa of Kashmir to Ceylon (IV. 503–506). Manu VIII. 157 prescribes that the king should allow that rate of interest which those who are adepts in sea voyages and land journeys and who understand what is required to be the interest at certain times and in certain

1810. Vide Dr. R. C. Majumdar's 'Champa' (1927) and 'Suvarṇadvīpa' (1937 and 1938): 'Indian influence in the Literature of Java and Bali' by Himansu Bhusana Sarkar; 'India and Java' by Dr. Bijan Raj Chatterjee (1933); G. Gorer's 'Bali and Angkor'; 'Sankrit texts from Bali' edited by M. Sylvain Levi in G. O. S.; Annual Bibliography of Indian Archaeology, vol. IX. pp. 39–50. The standard writings of Brandes, Bergaigne, Kern, Krom, Parmentier and other scholars on Java, Champa and other countries of the Eastern Archipelago are not mentioned here, as they are not in English. They are referred to by Dr. Majumdar and others.

1811. The whole passage is interesting and may be set out here: 'Just as a shipowner, who has become wealthy by constantly levying freight in some seaport town, will be able to traverse the high seas and go to Vaṅga or Takkola or China or Sovira, Surat or Alexandria or Coromandel coast or Further India or any other place where ships do congregate' &c. (S. B. E. vol. 36 p. 269).

places determine to be the proper one. Yāj. II. 38 provides for very high interest (20 per cent per month) from those who engage in trade by sea. Nār. IV. 179 says that a trader (samudra-vaṇik) who makes sea voyages is not a proper witness. The Vāyu (45. 78–80) and other purāṇas state that Bhāratavarṣa[1812] has nine divisions called *dvīpas*, all of which are separated from each other by the sea and are not (easily accessible, that Jambudvīpa (India proper) is the 9th dvīpa and the other eight are Indra, Kaseru, Tāmraparṇī, Gabhastimat, Nāga, Saumya (Siam?), Gandharva, Vāruṇa (Borneo?). Therefore Bhāratavarṣa according to Paurāṇic Geography included modern India and also Greater India. None of the ancient works at least says anything against śūdras undertaking sea voyages; but now even śūdras, probably in their desire to emulate the brāhmaṇa and rise higher in social esteem, think that sea voyage is forbidden to them also.

When during the latter half of the 19th century some brāhmaṇas went to England on a political mission or for study and returned to India, the question whether after taking the appropriate *prāyaścitta* those brāhmaṇas could be associated with fully as before was referred to many orthodox and learned *Pandits* (such as the late Tārānātha Tarkavācaspati) and it is creditable to the Pandits and gratifying to note that many of them came to the conclusion that they could be associated with by others. The two principal texts referred to were those of the Bṛhan-Nāradapurāṇa (note 1798 above) and the one from the Ādityapurāṇa translated at the head of this particular Kalivarjya. Very interesting and hairsplitting arguments and explanations were advanced by the learned Pandits in 1872. Some of them may be noted here. As regards the Nāradīya passage, it is argued that only that seavoyage is forbidden in the Kali, which was a righteous act (dharma) in former times. In Parāśara-smṛti XII. 58 the following prāyaścitta[1813] is prescribed for brāhmaṇa murder: 'the sinner should

1812. भारतस्यास्य वर्षस्य नवभेदाः प्रकीर्तिताः । समुद्रान्तरिता ज्ञेयास्ते त्वगम्याः परस्परम् ॥ इन्द्रद्वीपः कसेरुश्च ताम्रपर्णी गभस्तिमान् । नागद्वीपस्तथा सौम्यो गन्धर्वस्त्वथ वारुणः । अयं तु नवमस्तेषां द्वीपः सागरसंवृतः । वायु 45. 78–80. The same verses (except the half verse समुद्रान्तरिता &c) occur in मत्स्य 114. 7–9 and Brahmapurāṇa 19. 6–7.

1813. एतेषु स्नापयन्नेनः पुण्यं गत्वा तु सागरम् । दशयोजनविस्तीर्णं शतयोजनमायतम् ॥ रामचन्द्रसमादिष्टं नलसञ्चयसञ्चितम् । सेतुं दृष्ट्वा समुद्रस्य ब्रह्महत्यां व्यपोहति ॥ पराशरस्मृति XII. 69–71.

be directed to perform the penance of going to the *setu* on the ocean; he should beg for alms on the road to the setu from men of the four classes that are free from improper acts, should walk barefooted and without umbrella, should declare his sin in all towns, villages and hamlets of cowherds on the way while resting there or in forests, sacred places and rivers and after reaching the sea and on seeing the setu, 100 yojanas long and 10 yojanas broad, constructed with heaps of stones at the bidding of Rāma by Nala he will get rid of the sin of brāhmaṇa murder'. Here brāhmaṇa murder being a most heinous offence it cannot be supposed that a mere sight of the *setu* from land would absolve the sinner and the words about the length and breadth of the setu would be otherwise meaningless. Therefore what is meant is that he must undertake a sea-voyage and go along the whole length and breadth of the setu in a vessel. Such a voyage was religious conduct in former ages, but in Kali this is forbidden. The word 'holding a kamaṇḍalu' (which also was prescribed as dharma in former ages) conveys that a similar or analogous practice is referred to in the immediately preceding words. The words 'dvijasyābdhau &c.' are to be interpreted as follows: 'nauyātuḥ' is the genitive singular of 'nauyātṛ'. The affix 'tṛ' is not the ordinary 'tṛ' but it is 'tṛn' used in the sense of 'one who habitually does a thing', according to Pāṇini III. 2. 134-135.[1814] Therefore the words of the Ādityapurāṇa apply only to a dvija who habitually engages in a sea voyage either as a trader or as a helmsman or sailor. When Nārada (Dāyabhāga 21) states that even an aurasa son who is hostile to his father or who is patita (guilty of one of the five great sins) or is impotent or is 'apayātrita' he does not get a share of ancestral wealth, the Vyavahāramayūkha explains the last word as 'one who goes to another continent (other than Jambudvīpa) through mid ocean by means of a vessel for purposes of trade' and relies on this passage (dvijasyābdhau &c.) for support. So according to the author of the V. Mayūkha only that dvija who constantly undertakes sea voyages for trade is here declared to be unfit for social intercourse though he may have taken a prāyaścitta, and not one who casually or once in a life undertakes a sea voyage. No text prescribes a prāyaścitta merely for going in a vessel on the sea. If that were intended in this passage the text would have read differently viz. 'samudre naugamanābhāve &c.' Even śiṣṭas have been

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1814. आक्वेस्तच्छीलतद्धर्मतत्साधुकारिषु । तृन् । पाणिनि III. 2. 134-135.

crossing the sea to Ceylon for purposes of trade. In dramas like the Ratnāvali (where the *kañcukin* Bābhravya undertakes a sea voyage and a merchant from Kauśāmbī is said to have gone to Ceylon) and in romances like the Daśakumāracarita frequent references are made to sea voyages to Ceylon and other countries. What is aimed to be hit when prāyaścitta for sea voyage is prescribed is the fact that on such voyages a man may give up for long such daily duties as the performance of *sandhyā* and may have come in very close contact with *mlecchas* as regards food etc. If he has done these two, then only he is not fit for intercourse even though he may have undergone a prāyaścitta. If he performs his daily duties wherever he may dwell and does not come in too close a contact with mlecchas he may have to perform no prāyaścitta, much less would he become unfit for social intercourse. The view of Medhātithi on Manu II. 23 that any country by itself is not unfit for the residence of an ārya, that if mlecchas overrun a country in India and permanently reside there it may become a mlecchadeśa, that even a mleccha country, if it be conquered by an Indian king and if the system of the four varṇas be introduced therein, would be a fit one for the performance of Vedic sacrifices, has already been noted (in H. of Dh. vol. II. p. 16). It has to be remembered that the Ādiparva (85. 34) states that *mlecchas* and *yavanas* sprang from Anu and Turvasu, sons of Yayāti. The Sabhāparva notes that Bhīma made mlecchas dwelling beyond the seas and in Anūpa bring tribute (30. 25–27) and that mlecchas came to see the Rājasūya sacrifice along with Bhagadatta of Prāgjyotiṣa (Sabhā 34. 9–10). The following propositions follow from the above discussion : (1) As the word 'dvija' is used a śūdra or a person of the mixed castes (*saṅkīrṇa-jāti*) does not become unfit for social intercourse even by habitually undertaking a sea voyage, but he may have to undergo a prāyaścitta ; (2) a dvija who casually undertakes a sea voyage to a place outside India either at the king's bidding or for any other purpose has to undergo a prāyaścitta, but if he does so he becomes fit for social intercourse ; (3) a dvija habitually undertaking a sea voyage for trade or as a sailor would become unfit for intercourse even after undergoing prāyaścitta. Manu IX. 314, when enlarging upon the devastating power of brāhmaṇas, mentions that the sea was made undrinkable by brāhmaṇas, which, according to Medhātithi and other commentators, has in view the story in Śānti 343.60–61. It is difficult to say whether this story had any influence in leading to the prohibition against sea voyage.

The Smṛtikaustubha explains that 'samudrayātrā' means 'tīrthayātrā' i. e. pilgrimage to holy places beyond the sea and that is forbidden here. But this seems to be wrong, as stated by Kṛṣṇabhaṭṭa on the Nir. S. The latter says that expiation is to be undergone only where a sea voyage is undertaken from worldly motives, but where a sea voyage has to be undertaken for reaching a holy place like the Śaṅkhoddhāra-tīrtha, it is an inseparable part of the pilgrimage and therefore there is no necessity to undergo a prāyaścitta.[1815]

11. 'The initiation for a *sattra*' (l. 8). Sattras were sacrificial sessions the duration of which varied from 12 days to a year, 12 years or even more. Only brāhmaṇas could perform them (Jai. VI. 6. 16-23). Acc. to Śabara on Jai. VI. 2. 1 persons who engaged in them must not be less than 17 nor more than 24. All of them were both sacrificers (yajamāna) as well as priests. Vide H. of Dh. vol. II pp. 1239-1246 for sattras. The prohibition against engaging in sattras is a clear indication that people had become tired of the ancient Vedic sacrifices, of the great demands they made on time and wealth and had begun to prefer other and easier modes of worship.

12. 'Carrying a jar of water' (l. 8). The Baud. Dh. S. I. 4 devotes numerous[1816] sūtras (1-27) to the subject of carrying an earthen or wooden jar full of water. Every *snātaka* was always to carry a jar of water from which he was to take water for *śauca*. He was to wash it with water and rub it with his hand. This was declared to be equal to *paryagnikaraṇa* (encircling with fire for purification, vide H. Dh. vol. II. p. 1120 n. 2501). He was not to go to another's house or to the village boundary or on a journey without the jar. Vas. 12. 14-17, Manu IV. 36, Yāj. I. 133 contain similar provisions. Viśvarūpa explains that the snātaka himself need not carry it and that it may be carried for him by another. It was an encumbrance, gave rise to unhygienic and unclean habits and so gradually it came to be dispensed with. This practice was regularised by declaring that in the Kali age a water jar was

1815. एतच्च प्रायश्चित्तं रागप्राप्ते समुद्रयान एव। शङ्खोद्धारादितीर्थे यात्राविधिनान्तरीयकं समुद्रयानमतो दोषाभावान्न प्रायश्चित्तमित्यन्यत्र विस्तरः। कृष्णभट्ट on नि. सि. p. 1288.

1816. अथ कमण्डलुचर्यामुपदिशन्ति। ... तस्माच्छौचं कृत्वा पाणिना परिमृजीत पर्यग्निकरणं हि तत्। ... अथाप्युदाहरन्ति। कमण्डलुर्द्विजातीनां शौचार्थं विहितः पुरा। ब्रह्मणा मुनिमुख्यैश्च तस्मात्तं धारयेत्सदा॥ ततः शौचं ततः पानं सन्ध्योपासनमेव च। निर्विशङ्केन कर्तव्यं यदीच्छेच्छ्रेय आत्मनः। ... पितृदेवाग्निकार्येषु तस्मात्तं परिवर्जयेत्। तस्माद् विना कमण्डलुना नाध्वानं व्रजेन्न सीमान्तं न गृहाद् गृहम्। बौ. ध. सू. I. 4. 1, 3, 18-19, 24, 25.

not to be carried at all. The Madanapārijāta (p. 16) explained that 'kamaṇḍaluvidhāraṇa' refers to perpetual studenthood, but this explanation cannot be accepted, because in the Nāradīyapurāṇa (note 1798 above) both are mentioned separately. The K. V. N. (folio 3 a) notes that some explained 'kamaṇḍaluvidhāraṇam' as standing for 'dīrghakālam brahmacaryam' (studenthood for long periods).

13. 'Starting on the Great Journey' (l. 9). The Bṛhan-Nāradīya-purāṇa (pūrvārdha 24. 16) also forbids this. According to Manu VI. 31 and Yāj. III. 55 a forest hermit, when he suffered from an incurable disease and could not perform the duties of his order, was allowed to start towards the north-east on the Great Journey (mahāprasthāna) till the body fell down to rise no more. Similarly, a man guilty of brāhmaṇa murder was allowed to meet death at the hands of archers or to throw himself head foremost into fire. Vide H. of Dh. vol. II. pp. 924-928 for Mahāprasthānagamana. Aparārka[1817] (p. 877-879) quotes long passages from the Ādipurāṇa to the effect that if a man suffering from an incurable disease starts on the Great Journey in the Himālaya or commits suicide by entering fire or water or by falling from a precipice, not only does he not incur sin, but on the contrary he goes to heaven. It is rather inconsistent that the Ādipurāṇa (or Ādityapurāṇa) should in one place extol the starting on the Great Journey and in another place should forbid it in the Kali age. The K. V. N. cites the instance of the Pāṇḍavas that are said to have started on the Great Journey. This makes one suspicious about the authenticity of the passages on Kalivarjya quoted from the Ādityapurāṇa by some and from Ādipurāṇa by others.

14. 'The killing of a cow in the sacrifice called Gosava' (l. 9).

There were various occasions on which in ancient times a cow was sacrificed. The Anūbandhyā cow killed at the end of the Udayanīyā iṣṭi in Agniṣṭoma has been referred to above (on p. 627 n. 1196). In the Madhuparka which was offered

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1817. तथा चादिपुराणम्। दुश्चिकित्स्यैर्महारोगैः पीडितस्तु पुमान्यदि। प्रविशेज्ज्वलनं दीप्तं करोत्यनशनं तथा॥ अगाधतोयराशिं वा भृगुप्रपतनं तथा। गच्छेन्महापथं वापि तुषारगिरिमादरात्॥ प्रयागवटशाखायां देहत्यागं करोति वा। स्वयं देहविनाशस्य काले प्राप्ते महामतिः। उत्तमान्प्राप्नुयाल्लोकान्नात्मघाती भवेत्क्वचित्। q. by अपरार्क p. 877 and by परा. मा. I. 2. 228 (as from आदित्यपुराण). अपरार्क (p. 879) further quotes 'महाप्रस्थानयात्रा च कर्तव्या तुहिनोपरि। आश्रित्य सत्त्वं धैर्यं च सद्यः स्वर्गप्रदा च सा॥'

to an honoured guest a cow was either killed or let loose at the desire of the guest. Vide H. of Dh. vol. II pp. 543-545. A cow was killed in one of the three or four *aṣṭakā* śrāddhas (vide Khādira gr. III. 4.1, Gobhila gr. III. 10. 16). Āp. Dh. S. II. 7. 16. 25 states that if cow's flesh is offered in śrāddha for the *pitṛs*, the latter are gratified for one year. There was a sacrifice called Gosava or Gomedha, that was an Ukthya in which the fees were ten thousand cows and which according to some could be performed only by a vaiśya (Kāt. Śr. 22. 11.[1818] 3-8). A bull was killed as an offering in the rite called śūlagava (vide H. of Dh. vol. II pp. 831-832). As flesh-eating came to be looked down upon, cow sacrifice became most abhorrent and Kalivarjya texts only register a prohibition which had been acted upon centuries before.

15. 'The employment of cups of wine in the Sautrāmaṇī' (1. 10).

The Sautrāmaṇī is not a soma sacrifice but it is a combination of an *iṣṭi* with an animal sacrifice. It was so called from 'sutrāman' (an epithet of Indra). Its peculiar characteristic was the offering of *surā* in cups. In modern times milk is offered in its place and Āp. Śr. allowed it even in ancient times[1819]. It was included among the seven *haviryajñas* by Gaut. (VIII. 20). At the end of the Rājasūya it was performed or in Agnicayana or for one who suffered vomiting or purging from the excessive drinking of soma. For sautrāmaṇī and the preparation of surā in it, vide H. of Dh. vol. II. pp. 1225-1228. Bhaṭṭoji (in com. on Caturviṁśati-mata p. 53) and the Nirṇayasindhu construe this to mean 'having social intercourse with one who employs surā in Sautrāmaṇī' but this is not satisfactory. The Dharmasindhu explains as above (III. pūrvārdha p. 357)[1820].

1818. ऋषभगोसवौ । ... उक्थ्यो गोसवो अयुतदक्षिणः । वैश्ययज्ञ इत्येके । स्वाराज्यो विशो यं पुरस्कुर्वीरन् । कात्या. श्रौ. 22. 11. 3, 6-8.

1819. चात्वाले मार्जयित्वापरस्मिन् खरे सुराग्रहान् गृह्णन्ति । ... पयोग्रहा वा स्युः । आप. श्रौ. 19. 2. 7, 13.

1820. सुराग्रहणस्य सुराग्रहणकर्तुः संग्रहः व्यवहारः । भट्टोजि on चतुर्विंशतिमत p. 53 ; सौत्रामण्यामपि यज्ञेऽपि सुरापात्रग्रहस्तथा । धर्मसिन्धु III. p. 357. The कलिवर्ज्यवि. (follo 6b) remarks, 'सुराग्रहणस्य संग्रहः प्रयोगविधिनानुष्ठापनम् । यत्तु संग्रहपदस्वारस्यानुसारेण सुराग्रहणस्येत्यनेन सुराग्रहणकर्तारं विवक्षित्वा तस्य संग्रहो व्यवहार इति व्याख्यातं तन्न । असत्कुक्रमार्गेण गतिसम्भवे लक्षणाश्रयस्य अन्याय्यत्वात् । किं चैवं सति सौत्रामण्यां सुराग्रहस्य निषेधो न स्यात्तत्कर्तुः परं व्यवहारनिषेधः स्यात् । तच्च समाचारविरुद्धम्'.

16. 'The licking of the Agnihotrahavaṇī and the use of it even after it was licked' (l. 11). In the Agnihotra the *sruva* ladle is held in the right hand and the *sruc* called agnihotrahavaṇī is held in the left and the milk is poured into the latter from the milk pot with sruva. After the Agnihotra homa is offered the agnihotrahavaṇī is licked twice in order to take out the remnants of the milk and after wiping it with darbha blades it is used again. Ordinarily a vessel when it is once licked by a man cannot be used again in a religious rite unless proper purification is resorted to. But this did not apply to the Agnihotrahavaṇī and *camasas* of soma. Vide H. of Dh. vol. II p. 1002, n. 2663 for agnihotrahavaṇī, p. 1005 for its licking and p. 1177 (n. 2598) for the drinking of soma from the same *camasa* by the several priests. The licking of the agnihotrahavaṇī and its use constitute really the subject of the prohibition.[1821]

17. 'Entering on the stage of forest hermit as laid down in the texts about it' (l. 12). Gaut. III. 25–34, Āp. Dh. S. (II. 9. 21. 18 to II. 9. 23. 2), Manu VI. 1–32, Vas. IX. 1–11, Yāj. III. 45–55 lay down elaborate rules for the stage of forest hermits. Vide H. of Dh. vol. II pp. 917–929 for a description and remarks on *saṃnyāsa* to be made later on.

18. 'The narrowing down or curtailment of the periods of impurity depending upon the Vedic learning and the mode of life of a person' (l. 13). 'Agha' means 'āśauca'; 'vṛtta' (mode of life) refers to tending sacred fires or maintaining oneself in the way described by Manu IV. 7–10. The general rule about the period of impurity for a brāhmaṇa on the death of a sapiṇḍa was stated by Gaut. 14. 1, Manu V. 59 and 83 to be that it was ten days and Aṅgiras quoted by the Mit. on Yāj. III. 22 prescribes impurity for ten days for all varṇas, but Manu V. 59 also spoke of the period being four days, three days or one day, which, acc. to the Mit. on Yāj. III. 28–29, refers respectively to kumbhīdhānya, one who has collected food for three days or one who collects nothing for the morrow. Dakṣa VI. 6 and Parā-

1821. प्राग्दण्डयोदग्दण्डया वा स्रुचा द्विराचामति द्विश्च निर्लेढि । सत्या. श्रौ. III. 7. 19; लीढाया उच्छिष्टदोषशुद्ध्युपायं विना परिग्रहो यस्मिन् विहितत्वेन निर्दोषत्वादित्याशयः । ततश्च न पृथङ्निषेधः परिग्रहस्य । स्मृतिकौस्तुभ p. 471 ; अग्निहोत्रं हूयते यया स्रुचा सा वैकङ्कती अग्निहोत्रहवणी तस्याश्च होमानन्तरं हुतावशिष्टप्रतिपत्तिभूतप्राशनार्थं लेहो जिह्वया-ऽस्वादनं कथंचिल्लीढायास्तस्याः पुनः परिग्रहो दिनान्तरे होमसाधनता । कलिवर्ज्यवि. folio 7a.

śara[1822] III. 5 both state that a brāhmaṇa who keeps the Vedic fires and has studied the Veda becomes free from impurity in a day, one who has only studied the Veda (but does not tend sacred fires) becomes free in three days, while one devoid of both becomes free after ten days. Aparārka (p. 894) and Haradatta on Gaut. 14. 1 quote Bṛhaspati to the same effect. The Mit. remarks[1823] (on Yāj. III. 28-29) that the curtailment of the period of impurity is not absolute but is restricted only to certain special matters viz. the receiving of gifts, the performance of Agnihotra, the study of the Veda and such matters in which distress would be caused if the period were not curtailed. This explanation clearly proves that Vijñāneśvara (end of 11th century) was not aware of the prohibition of the curtailment of the periods of impurity or treated it with scant respect. The curtailment of the period of impurity was laid down probably because curtailment led to confusion, since a person may claim to be learned, while his neighbours may not concede that claim.

19. 'Prescribing death as the penance for brāhmaṇas'. (1. 14).

Manu XI. 89 provides that if a person intentionally murders a brāhmaṇa there is no expiation for it. Manu XI. 90 prescribes death by drinking boiling wine for the sin of drinking *surā*, while Manu XI. 146 provides[1824] that if a man knowingly drinks wine there is no expiation for it, but only death. The Viṣṇudharmasūtra (chap. 34) states that incest with the mother, daughter or daughter-in-law is *atipātaka*, such sinners have to

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1822. एकाहाच्छुध्यते विप्रो योऽग्निवेदसमन्वितः । त्र्यहात्केवलवेदस्तु द्विहीनो दशभिर्दिनैः ॥ दक्ष VI. 6 and पराशर III. 5, quoted by विश्वरूप on या. III, 30; त्रिरात्रेणैव शुध्येत्तु विप्रो वेदाग्निसंयुतः । पञ्चभिर्वाग्निहीनस्तु दशाहाद् ब्राह्मणब्रुवः ॥ शिलोञ्छायाचितैर्जीवन् सद्यः शुध्येद् द्विजोत्तमः । गायत्रीमात्रसारोऽपि त्रिस्रः सन्ध्या उपास्ति च ॥ न करोति श्ववृत्तिं च त्र्यहः सूतकं भवेत् । बृह. q. by अपरार्क p. 894.

1823. अयं चाशौचसङ्कोचो येनैव प्रतिग्रहादिना विनार्तिस्तद्विषयो न सर्वत्रेत्यवगन्तव्यम् । ... अतः काचित्कमेवेदमाशौचसङ्कोचविधानं न पुनः सर्वसंव्यवहाराविरोधोपरमित्यलमतिप्रपञ्चेन । मिता. on या III. 28-29.

1824. मतिपूर्वमनिर्देश्यं प्राणान्तिकमिति स्थितिः । मनु XI. 146. Most of the commentators of Manu explain this half differently as meaning 'a penance destructive of life should not be prescribed'. But this explanation is opposed to Gaut. 21. 7 (त्रीणि प्रथमान्यनिर्देश्यानि मनुः) and to Medhātithi. Vide कलिवर्ज्यवि. folio 7a ' यत्तु कैश्चिद् व्याख्यातं मतिपूर्वं ... स्थितेरिति मनुवाक्यानुरोधात् सर्वैर्विप्रेभ्यो मरणान्तिकं नोपदेष्टव्यं तैस्तु रहस्यप्रायश्चित्तवद्यथाकथंचित्तदुपदेश्यमिति तदन्यद् मनुस्मृतेरेतद्युगविषयत्वे प्रमाणाभावात् । '.

enter fire and there is no other penance for this sin. Vide Gaut. 21. 7 also. Some smṛtis held that there was no prāyaścitta for certain grave sins except falling from a precipice or into fire. As a brāhmaṇa's person became more and more sacred with the march of time, death ceased to be a penance for a brāhmaṇa sinner, however grave the sin might be. But this did not apply to a kṣatriya or any one else (other than a brāhmaṇa).

20. 'Pollution through contact with a sinner' (I. 15). Manu XI. 180 (= Śānti 165. 37 = Baud. Dh. S. II. 1. 88),[1825] Viṣṇu Dh. S. 35. 2–5 provide that if a person continues for one year in close association (*saṁsarga*) with one guilty of the grave sins (enumerated in Manu XI. 54), in respect of occupying the same conveyance or seat with him or dining in the same row with him he becomes patita; but he becomes patita immediately if he officiates as a priest for such a sinner or performs his upanayana for teaching him the sacred Gāyatrī and the Veda or if he enters into a matrimonial alliance with him. Parāśara (I. 25–26) states that in the Kṛta age a person became patita by speaking with a patita, in Tretā by seeing him, in Dvāpara by partaking of food prepared in his house, but in Kali by actually committing a (sinful) deed and that when a grave sin was committed by a man, in the Kṛta age the whole district in which he lived was to be abandoned, in Tretā the village, in Dvāpara his family alone and in Kali only the perpetrator.[1826] Parāśara (XII. 79) no doubt[1827] says that 'sins (i. e. pollutions are caused) are transferred, as a drop of oil (spreads) on water, by sitting or sleeping together or by using the same conveyance, by speaking with or by dining in the same row with a sinner'; but this only means that to associate with a sinner is bad, but it does not mean that to associate with a *patita* immediately makes the associator himself a patita. The Mit. on Yāj. III. 261 quotes Devala[1828] and Vṛddha-Bṛhaspati to the effect

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1825. संवत्सरेण पतति पतितेन सहाचरन्। याजनाध्यापनाद्यौनान्न तु यानासनाशनात्। मनु XI. 180, बौ. ध. सू. II. 1. 88.

1826. त्यजेद्देशं कृतयुगे त्रेतायां ग्राममुत्सृजेत्। द्वापरे कुलमेकं तु कर्तारं च कलौ युगे॥ कृते सम्भाषणात्पापं त्रेतायां चैव दर्शनात्। द्वापरे चान्नमादाय कलौ पतति कर्मणा॥ पराशर I. 25–26.

1827. आसनाच्छयनाद्यानात्सम्भाषात् सहभोजनात्। संक्रामन्ति हि पापानि तैलबिन्दुरिवाम्भसि॥ पराशर XII, 79, which is the same as कण्व q. by परा. मा. II. 1. p. 28 (where संलापात् is read for सम्भाषात्).

1828. संलापस्पर्शनिःश्वाससहयानासनाशनात्। याजनाध्यापनाद्यौनात्पापं संक्रमते नृणाम्॥ देवल p. by मिता. on या. III. 261, अपरार्क p. 1087.

that *saṁsarga* arises in nine ways viz. by talk, by touch, by breathing the same air (i. e. by being in the same room), by being in the same conveyance or on the same seat or bed, by dining in the same row, by being a sinner's priest or vedic teacher or entering into matrimonial alliance with him. The Par. M. says that Parāśara held the view that there was no *pātitya* by the various kinds of contact in Kali and so provided no prāyaścitta for *saṁsarga.* The Nirṇayasindhu[1829] and Bhaṭṭoji make similar remarks. The Udvāhatattva says that Parāśara I. 25 is to be interpreted in this way that merely speaking or touching a *patita* or receiving money from him does not make another liable to any prāyaścitta, but that if the association with a patita goes quite beyond these, then sin may be incurred by association. So almost all the digests are agreed that the rigour of the very strict rules about saṁsarga in Manu and Baud. was modified by declaring that speech with or sight of a sinner involved no sin in Kali.[1830]

21. 'Undergoing (secret) expiation for the grave sins (mahāpātakas) except theft' (l. 15). Hārīta (q. by Par. M. II.[1831] part 2, p. 153) prescribes secret expiation for a brāhmaṇa who has studied dharmaśāstra and committed a sin without anyone knowing it. Gaut. (chap. 24) prescribes certain expiations to be undergone secretly (without any third person knowing of such performance) for even mahāpātakas such as brāhmaṇa murder, drinking surā, incest and theft of gold. Vas. (chap. 25) also does the same and states (25. 2) that only those who have kept the sacred vedic fires, who are disciplined and old or learned are entitled to secret expiations for sins and not other people. The Viṣṇu Dh. S. 55 deals with secret expiations. Parāśara IX. 61 (last verse) laid down[1832] the general rule that one should openly

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1829. आचार्यस्तु कलियुगे संसर्गदोषाभावमभिप्रेत्य संसर्गप्रायश्चित्तं नाभ्यधात् । अत एव स्मृत्यन्तरे कलौ वर्ज्यानामनुक्रमणे संसर्गदोषः पापेषु इत्युक्तम् । परा. मा. II part 2 p. 90 ; it may be noted that the धर्मद्वैतनिर्णय (p. 132) quotes this passage and criticizes it ; कलौ कर्तैव लिप्यते—इति व्यासोक्तेः पतितसंसर्गे दोषसत्त्वेपि पातित्यं नेत्यर्थः । निर्णयसिन्धु III. p. 368.

1830. कलौ कर्तैव लिप्यते — इत्यनेन संभाषणस्पर्शनादिजन्यपातित्यस्यैव निषेधः । समयमयूख.

1831. अथ ब्राह्मणस्य श्रुतधर्मशास्त्रस्य रहस्यमनुक्रमिष्यामः । रहस्ये रहस्ये प्रकाशे प्रकाशम् । परा. मा. II part 2, p. 153.

1832. तस्मात्प्रकाशयेत्पापं स्वधर्मं सततं चरेत् । स्त्रीबालभृत्यगोविप्रेष्वतिकोपं विवर्जयेत् ॥ पराशर IX. last verse.

declare one's sin. The Kalivarjya text provides that secret expiation is allowed as regards only theft among the mahāpātakas in the Kali age, though in earlier ages it was allowed as to other mahāpātakas also. The Nirṇayasindhu says that secret expiation is allowed only to brāhmaṇas. According to the Dharmasindhu, in the Kali age if a man is guilty of the murder of a brāhmaṇa or of other mahāpātakas he does not avoid the consequences of falling into Hell when he undergoes an expiation but he becomes only fit for social intercourse, while as regards theft of gold (a mahāpātaka) by undergoing prāyaścitta he avoids the fall into hell and also becomes fit for social intercourse. The Kalivarjyavinirṇaya appears to hold that all secret expiations are forbidden in Kali.[1833]

22. 'The act of offering an animal with the recital of Vedic *mantras* to the bridegroom, to a guest and in honour of pitṛs' (l. 16).[1834] Madhuparka was offered in ancient times on several occasions and to several persons such as to *ṛtviks* at sacrifices, to the king, to a *snātaka*, to one's ācārya, father-in-law, paternal or maternal uncle and to a bridegroom. Vide H. of Dh. vol. II. pp. 542–546 for details about Madhuparka. Originally a cow or a bull was killed for an honoured guest, later on when the cow came to be extremely sacred the flesh of some other animal was offered; when flesh-eating itself came to be looked down upon then only *pāyasa* and other vegetarian eatables came to be prescribed. Vide H. of Dh. vol. II pp. 777–782 on flesh-eating. This half line forbids the offering of flesh to a bridegroom or to an honoured guest (in madhuparka) and the feeding of

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1833. The कलिवर्ज्यवि. (folio 8a) notes, 'अत एव बृहन्नारदीयविष्णुपुराणादिषु—छादयन्ति प्रयत्नेन स्वकीयं पापकर्मिणः । रहस्यमेव कुर्वन्ति प्रायश्चित्तक्रियां कलौ ॥ मनःशुद्धिविहीनानां निष्कृतिर्न ततो भवेत्—इत्यादि तत्र तत्र निन्दाप्रक्रमे रहस्यव्रतमेव निन्दितम् ।'. It should be noticed that the Nirṇayasindhu and a few others read संसर्गदोषस्तेयान्यमहापातकनिष्कृतिः as one word meaning 'secret expiation for mahāpātakas other than theft and other than association with those guilty of grave sins'. The स्मृत्यर्थसार (p. 2), मद. पा. p. 16 and उद्वाहतत्त्व (p. 112) read this half line as संसर्गदोषः पापेषु मधुपर्के पशोर्वधः. 'ब्रह्महत्यादिमहापातकेषु प्रायश्चित्तेन नरकनिवृत्तिर्न भवति किं त्विह लोके व्यवहार्यतामात्रं कलौ भवति । स्वर्णस्तेयादिषु तु प्रायश्चित्तेन नरकनिवृत्तिर्व्यवहार्यता च । धर्मसिन्धु III, पूर्वार्ध p. 358.

1834. उपाकरण has a technical sense. It means 'touching the animal to be sacrificed with several mantras'. Manu V. 7 employs the word in that sense and Kullūka comments, 'पशुयागादौ मन्त्रबहुलेन पशोः स्पर्शनमुपाकरणम्'. The कलिवर्ज्यवि. (9a) quotes देवताभ्यो विशेषेभ्यो त्वा जुष्टमुपाकरोमि. With reference to śrāddha the word upākaraṇa is used in a secondary sense and not in the literal sense. For the upākaraṇa *mantra* अमुष्मै...करोमि, vide आश्व. गृ. I. 11. 2.

brāhmaṇas with flesh at śrāddhas. Comparatively so late a writer as Yāj. (I. 258–259) extols the high gratification that the *Manes* feel when flesh of various animals is offered in śrāddhas. This one prohibition includes in itself several prohibitions that are separately mentioned in other texts such as 'govadha' (in notes 1797 and 1799), the killing of an animal in a Madhuparka (in n. 1798), 'gavālambha' and 'palapaitṛka' (in note 1802). It is noteworthy that even so late as the first half of the 17th century Viśvanātha, a great logician, takes up the cudgels on behalf of flesh-eating by brāhmaṇas in sacrifices, śrāddha, madhuparka, in danger to life and when ordered by a brāhmaṇa and charges those who totally forbid flesh-eating with being the followers of the doctrines of Bauddhas, while the latter at the same time prescribe expiations for even murderers of brāhmaṇas through greed of money and marry their maternal uncle's daughters or other sapiṇḍas of their mother, though both of these latter are forbidden by the Kalivarjya texts.[1835]

23. 'Association with those that are guilty of intercourse with women who are not of the same varṇa, even though the former may have undergone proper expiation for the lapse' (I. 18). There was great divergence of views as regards the prāyaścitta for adultery by a male with a female of the same class, of a higher class or of a lower class. Further the ancient sūtras were rather hard on the guilty parties, the harsh rules being relaxed by later smṛti writers. For example, Gaut. 23. 14–15 and Vas. 21. 1–3 prescribe for a male of a lower caste having intercourse with a woman of a higher caste death in various ways. If a brāhmaṇa had sexual intercourse with a cāṇḍāla or śvapāka woman Parāśara (X. 5–7) prescribes that he has to undergo a fast for three days, tonsure of the head together with the top knot, three Prājāpatyas, Brahmakūrca, feeding brāhmaṇas, constant recital of the Gāyatrī, gift of two pairs of cows and then he becomes pure, while a śūdra doing the same had to undergo the expiation of one Prājāpatya and had to make a

1835. तस्माद्यज्ञे श्राद्धे मधुपर्के प्राणात्यये ब्राह्मणाज्ञायां च भोक्तव्यं तद्व्यतिरेकेणापि भृत्यभरणावशिष्टं देवपित्रर्चनावशिष्टं च चतुर्णामपि वर्णानामविशेषेण भक्ष्यमेव । मांसतत्त्वविवेक of विश्वनाथ (Sarasvatibhavana series, Benares, 1927); ये तु कलिवर्ज्यतया मांसश्राद्धे विवदन्ते तेषामन्यमहापातकानिष्कृतिरिति कलिवर्ज्यतयोक्तमपि ब्रह्महत्यातत्संसर्गप्रायश्चित्तं धनलोभादुपदिशन्ति मातृसपिण्डानयने (सपिण्डापरिणयने ?) च न विवदन्ते रागद्वेषदूषितचेतसो देवानां प्रियास्ते केन शिक्षणीया इत्यलं मांसविद्वेषिभिः सौगतमतानुसारिभिः सह श्रमेणेति । *ibid.*, pp. 28–29.

gift of two cows. If a person of a low caste has intercourse with a woman of a higher caste (e. g. a śūdra has intercourse with a brāhmaṇa woman) Saṁvarta (verses 166–167) prescribes the expiation of subsisting for a month on cow's urine and *yāvaka* (barley gruel) for him. If a brāhmaṇa commits adultery with a śūdra or cāṇḍāla woman Saṁvarta (verses 169–170) prescribes the expiation of cāndrāyaṇa, while Parāśara (X. 17-20) prescribes a far more severe expiation. The present text prescribes that, even after undergoing expiation, men guilty of intercourse with women of castes other than their own cannot be allowed to have social intercourse with their castemen. The Dharmasindhu[1836] says that śūdras that have intercourse with brāhmaṇa or other women of a higher caste are hereby declared to be unfit for social intercourse even after they undergo expiation. This no doubt made for strictness in morals, but it also led to the preservation of caste exclusiveness.

24. 'Abandonment of a mother (or other woman who is to be honoured owing to relationship) because she has had sexual intercourse with one of low class' (1. 19).

The provisions of the sūtras and smṛtis on the subject of expiation for adultery by women varied from time to time. Gaut. 23. 14 and Manu VIII. 371 prescribe that a woman who has intercourse with a man of low caste is to be punished by the king with being devoured by dogs. But other smṛtis and Manu himself (XI. 177) are not so harsh, but are rather humane in their treatment of adulteresses. Manu XI. 176 says that the husband should keep confined to one apartment his corrupt wife and compel her to perform the expiation which is prescribed for males in cases of adultery. Manu XI. 59 and Yāj. III. 235 regard adultery by a male (pāradārya) as an upapātaka and Manu XI. 117 and Yāj. III. 265 prescribe cāndrāyaṇa as an expiation for all upapātakas. Vas. XXI. 12 prescribes that the wives of men of the three higher castes who are guilty of adultery with a śūdra may be purified by an expiation if no child is born of the intercourse but not otherwise. Yāj. I. 72 provides that a woman becomes free from the taint of adultery when she has her monthly illness after the adultery but if she conceives in adulterous intercourse she may be abandoned. The Mit. on Yāj. I. 72 states that both Yāj. and Vas. are to be

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1836. विप्रादिस्त्रीसम्भोगेन भ्रष्टानां शूद्रादीनां प्रायश्चित्तेऽपि संसर्गो निषिद्धः । धर्मसिन्धु III. पूर्वार्ध p. 358.

understood in the same sense and abandonment does not mean driving out of the house but only not allowing her to participate in religious acts and not having sexual intercourse with her. Vas. XXI. 10 states that only four kinds of women are to be abandoned, viz. one who has intercourse with the husband's pupil or with the husband's *guru*, one who attempts to kill her husband or one who commits adultery with a man of a degraded caste. Yāj. (III. 296–7) provides that to women that are patita the same rules apply as to men, but they should be given food, raiment and protection and that intercourse with a man of low caste is one of the three gravest sins for women. Vide Mit. on Yāj. III. 297. The present text states that a woman (such as a mother) who is entitled to honour from a person because of her relationship (as mother, elder sister etc.) is not to be abandoned and cast on the street by him, although she may be guilty of adultery with a degraded or low caste man, in spite of Vas. XXI. 10 and other texts (such as Bṛ.).[1837] That is, this text was more humane to such women than ancient texts. Kṛṣṇabhaṭṭa explains that 'gurustriyāḥ' means 'of a brāhmaṇa woman'. Vide H. of Dh. vol. II pp. 571–573 for further remarks on adulterous women. Āp. Dh. S. I. 10. 28. 9 requires the son always to serve and wait upon the mother even though she may be *patita*. Atri[1838] (195–196) and Devala (50–51) contain two verses (almost in the same words) which are lax as compared with other ancient texts. They say: 'If a woman conceives through intercourse with a male who is not of her caste, she becomes impure till her delivery. When she is delivered or she has her monthly illness after the intercourse she becomes like pure gold'. Atri (197–198) further provides that whether a woman willingly has sexual intercourse or is deceived or is enjoyed against her will or in secret, she should not be abandoned; one should wait till the monthly illness and she becomes purified by that illness'. This comparative laxity of

1837. अनिच्छन्ती तु या भुक्ता गुप्तां तां वासयेद् गृहे । मलिनाङ्गीमधःशय्यां पिण्डमात्रोपजीविनीम् । कारयेन्निष्कृतिं कृच्छ्रं पराकं वा समे गताम् । हीनवर्णोपभुक्ता या त्याज्या वध्यापि वा भवेत् । बृहस्पति q. by विवादरत्नाकर p. 400 and by प्रायश्चित्तविवेक p. 360 (last half).

1838. असवर्णैस्तु यो गर्भः स्त्रीणां योनौ निषिच्यते । अशुद्धा सा भवेन्नारी यावद्गर्भं न मुञ्चति ॥ विमुक्ते तु ततः शल्ये रजश्चापि प्रदृश्यते । तदा सा शुध्यते नारी विमलं काञ्चनं यथा ॥ स्वयं विप्रतिपन्ना वा यदि वा विप्रतारिता । बलान्नारी प्रभुक्ता वा चौरभुक्ता तथापि वा ॥ न त्याज्या दूषिता नारी न कामोऽस्या विधीयते । ऋतुकाल उपासीत पुष्पकालेन शुध्यति ॥ अत्रि 195–198.

the later smṛtis of Devala and Atri is remedied by this Kalivarjya text which forbids abandonment of only such women as the mother, but allows the abandonment of others when guilty of intercourse with a male of low caste. Devala prescribes expiation by *sāntapana* in the case of those women that are raped by *mlecchas* and conceive (verses 47–49). Vide also Atri 201–202. The Sm. Kau. restricts this half verse to the mother alone. Parāśara (X 24–25) prescribes that if a woman be raped once she becomes free from pollution by undergoing Prājāpatya after she has her monthly illness and in other cases of rape she has to undergo Sāntapana.

25. 'Sacrificing one's life for the sake of another' (l. 20). The Viṣṇu Dh. S. III. 45 states [1839] that those who are killed in saving the life of a cow, a brāhmaṇa, the king, a friend, one's wealth and one's wife go to heaven and XVI. 18 provides that even those (untouchables) who are outside (the pale of the four varṇas) and sacrifice their life for brāhmaṇas, for cows and for women and children attain heaven. The Ādityapurāṇa quoted in Rājadharmakāṇḍa (p. 91) has a similar verse. The Samayamayūkha and Bhaṭṭoji quote a smṛti, 'one should at once sacrifice one's life for cows and brāhmaṇas'.[1840] This text forbids self-sacrifice of one's life simply for the promised reward of heaven in the cases specified. The K. V. N. (folio 9b) offers two more (rather far-fetched) explanations of this phrase, one of which is 'offering one's services as a serf to another'. This is prohibited to members of the three twice-born classes in Kali, but not to the śūdras, acc. to K. V. N.

26. 'Offering (of food) to another that remains after one has partaken of it' (l. 20). In the Madhuparka the honoured guest used to partake of a part of the offering of honey, milk

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1839. गोब्राह्मणनृपतिमित्रधनदारजीवितरक्षणाद्ये हतास्ते स्वर्गभाजः । विष्णुधर्मसूत्र III. 45 ; ब्राह्मणार्थे गवार्थे वा देहत्यागोऽनुपाकृतः । स्त्रीबालाभ्युपपत्तौ च बाह्यानां सिद्धिकारणम् ॥ *ibid* XVI. 18; आदित्यपुराणे–...ब्राह्मणानां गवां चैव रक्षार्थं हन्यते यदि । स शूरो जीवितं हित्वा इन्द्रलोकं प्रपद्यते ॥ राजधर्मकाण्ड p. 91.

1840. परेषां गोब्राह्मणव्यादीनामुद्देशेन तदापद्विमोक्षार्थं प्राणत्यागः 'गवार्थे ब्राह्मणार्थे वा सद्यः प्राणान् परित्यजेत्'–इत्यादिनोक्तः । भट्टोजि on चतुर्विंशतिमत p. 54. Almost the same words 'परेषां ... मुद्देशेन निमित्तेन तदा ... मोक्षार्थं बुद्धिपूर्वं ... इत्याद्युक्तः' occur in कलिवर्ज्यवि. folio 9a. We find in the पञ्चतन्त्र (I, verse 205) this verse quoted, 'गवामर्थे ब्राह्मणार्थे स्वाम्यर्थे स्त्रीकृते तथा । स्थानार्थे यस्त्यजेत्प्राणांस्तस्य लोकाः सनातनाः ॥' and I 420 is 'गवार्थे ब्राह्मणार्थे च प्राणत्यागं करोति यः । सूर्यस्य मण्डलं भित्त्वा स याति परमां गतिम् ॥.'

and curds and was to give the remainder to a brāhmaṇa (or a son or a younger brother). This is prohibited by this Kalivarjya text. Vide H. of Dh. vol. II. p. 544 for this practice. Āp. Dh. S. (I. 1. 4. 1-6) provides that the pupil may partake of the leavings of his teacher's food, but the teacher should not give him honey or meat or other food which will be opposed to the observances of a vedic student. The Nirṇayasindhu reads 'uddiṣṭasyāpi varjanam'[1841], which means 'not accepting what has been donated.' Yāj. I. 213 says that if a person worthy of accepting a gift does not keep it for himself (but passes it on to others), he secures the highest worlds obtained by those who make generous gifts. Bhaṭṭoji gives another explanation. Vas (14. 21) forbids a man to eat the remnants of his own food or to eat food that comes in contact with the leavings of food. This Kalivarjya text sets aside for the Kali age the prohibition contained in Vas. 14. 21 (acc. to Bhaṭṭoji). The K. V. N. (folio 10 a) states that this is the explanation given by some, but does not approve of it. The Sm. Kau. gives yet another but extremely far-fetched explanation.[1842] These several explanations of the same half verse indicate how some of the Kalivarjya texts are comparatively recent and have no settled meaning even according to comparatively late writers of digests.

27. 'The resolve to offer worship (throughout life) with various details to a certain idol (l. 21).

It is not easy to see why such a resolve should have been prohibited. Therefore this explanation given by Bhaṭṭoji, K. V. N. (folio 10 a), the Samayamayūkha and others is not satisfactory. It is better to accept the explanation of the Nir. S. that this forbids the undertaking of the worship of a particular image for wages. Aparārka (pp. 450 and 923) quotes a smṛti text defining a *devalaka* as a brāhmaṇa who performs the worship of an image for wages for three years and who thereby becomes unfit

1841. उच्छिष्टस्यापि वर्जनमिति । स्वमुच्छिष्टमुच्छिष्टोपहतं चेत्यादिवसिष्ठाद्युक्तम् । भट्टोजि on चतुर्वि. p. 54 ; उद्दिष्टस्य त्यक्तस्य वर्जनं प्रतिग्रहसमर्थोऽपीत्युक्तम् । निर्णयसिन्धु III. p. 368.

1842. वस्तुतस्तु उद्दिष्टस्यपथेनोत्कृष्टेन पित्रादिनोद्दिष्टं निर्दिष्टं शिक्षमित्येक एवार्थः । ताहृशस्याप (पि !) वर्जनं प्रायपाठाद्विहितव्रतान्तर्गतत्वम् । अपेति पाठेपि ताहृशस्य वस्तुनः परस्मै समर्पणं तन्निषिध्यते । ... तथा च कलौ गुरोर्वचनाद्गुरोधेन व्रतविकल्पाचरणे न केवलं व्रतहानिदोषाभावः प्रत्युत तद्वचनोल्लङ्घने दोषाधिक्यमपि । तथा च ब्रह्मवैवर्ते कलिब्रह्मसंवादे गुरुभजनमीश्वरभजनादप्याचरणीयमुक्तम् । स्मृतिकौ. p. 477.

to officiate at śrāddhas.[1843] Manu III. 152 declares the devalaka to be unfit for being invited for śrāddhas or rites in honour of gods and Kullūka quotes Devala to the effect that one who maintains himself on the treasury of a shrine is called devalaka. It is remarkable that Vṛddha-Hārīta (VIII. 77–80) says that only the worshippers of Śiva for wages are called devalaka and those of Viṣṇu are not. Acc. to the Sm. Kau. what is forbidden is the resolve to worship an image for securing a direct vision of the Deity.[1844] This is rather pedantic and far-fetched.

28. 'Touching the bodies of those (who are impure on the death of a relative) after the collection of the bones' (l. 22). The day on which the bones were to be collected after the body was cremated differed greatly according to various writers. The Mit. on Yāj. III. 17 notes that according to Saṁvarta[1845] (verse 38) the bones may be collected on the first, third, seventh or 9th day, that the Viṣṇu Dh. S. (19. 10–11) prescribes the 4th day for it and recommends the casting of them into the Ganges, that some did it on the 2nd day and that therefore everyone should follow his own Gṛhyasūtra. The Mit. on Yāj. III. 18 quotes Devala to the effect that, after the lapse of one-third of the period of impurity prescribed for members of the four varṇas (as in Yāj. III. 22), persons who lost relatives become touchable, that members of the four varṇas become touchable in three, four, five and ten days respectively. Saṁvarta (verses 39–40) states that, after the collection of bones, touching those who are under pollution due to death is allowed on the 4th, 6th, 8th and 10th day respectively in the case of brāhmaṇas, kṣatriyas, vaiśyas and śūdras. The present Kalivarjya text forbids this and becomes stricter as to the rules about impurity.

29. 'The performance by a brāhmaṇa of the duties of the killer of the victim in a sacrifice' (l. 23).

1843. स्मृत्यन्तरम्। स्पृष्ट्वा देवलकं चैव सवासा जलमाविशेत्। देवार्चनपरो विप्रो वित्तार्थी वत्सरत्रयम्। असौ देवलको नाम हव्यकव्येषु गर्हितः। अपरार्क p. 923 ; देवकोशोपजीवी च नाम्ना देवलको भवेत्। अपाङ्क्तेयः स विज्ञेयः सर्वकर्मसु सर्वदा॥ देवल q. by अपरार्क p. 450 and कुल्लूक on मनु III. 152 (first half).

1844. प्रतिमेत्यर्थेऽभिशब्दोऽपरोक्षज्ञानपरः। ... ततश्च देवतासाक्षात्काररूपो यः प्रतिमार्चनार्थः पूजाफलमिति यावत् तदुद्देश्यकः सङ्कल्पो निषिध्यते। प्रसक्तश्चासौ पूजाफलत्वेन देवतासाक्षात्कारस्य पौराणध्रुवादिगोचरानेकवचःसिद्धत्वात्। स्मृतिकौ. p. 473.

1845. प्रथमेऽह्नि तृतीये च सप्तमे नवमे तथा। चतुर्थेऽहनि कर्तव्यमस्थिसञ्चयनं द्विजैः॥ ततः सञ्चयनादूर्ध्वमङ्गस्पर्शो विधीयते। चतुर्थेऽहनि विप्रस्य षष्ठे वै क्षत्रियस्य च॥ अष्टमे दशमे चैव स्पर्शः स्याद्वैश्यशूद्रयोः। संवर्त 38–40.

The animal in a śrauta sacrifice was to be killed by choking it and strangling it. The person who did so was called *śamitṛ*. Different views were entertained as to who was to be the śamitṛ. Acc. to Jai. III. 7. 28–29 [1846] the adhvaryu himself was to be the śamitṛ; the usual opinion was that he was to be some one other than the *ṛtviks*. The Āśv. Śr. (XII. 9. 12–13) shows that he may be a brāhmaṇa or a non-brāhmaṇa. For further details vide H. of Dh. vol. II. pp. 1121–22, n. 2504. As animal sacrifices themselves came to be looked down upon or even forbidden, this text forbids a brāhmaṇa from being a śamitṛ.

30. 'The sale of the soma plant by brāhmaṇas' (l. 23).

Soma beverage was to be drunk only by brāhmaṇas. The soma plant had to be purchased and there was a symbolic haggling for it. The vendor of soma in ancient [1847] times was, acc. to Kāt. Śr. VII. 6. 2–4 and Āp. Śr. X. 20. 12, either a brāhmaṇa of Kutsa gotra or any brāhmaṇa or a śūdra. [1847] In later times, though Manu XI. 7 (= Śānti.165. 7) and Nār. (dattāpradānika 7) [1848] allow a brāhmaṇa who has wealth sufficient for the maintenance of himself and his dependents for three years or more to perform a soma sacrifice, yet Manu III. 158, Yāj. I. 165 and Vas. 14. 3 hold that a brāhmaṇa who sells the soma plant is unfit to be invited at a śrāddha and that one should not partake of food at his house. Manu X. 88 forbids a brāhmaṇa to sell water, arms, poison, soma &c. Vide H. of Dh. vol. II. pp. 1141–1143 for purchase of soma and the dramatic haggling for it.

31. 'Allowing a brāhmaṇa householder to eat food at the houses of four classes of people among śūdras viz. his slave, his cowherd, a hereditary family friend and one who cultivates his fields on the basis of paying a half or other portion of the produce to him' (ll. 25–26).

Gaut. 17. 6, Manu IV. 253 (=Viṣṇu Dh. S. [1849] 57. 16), Yāj. I. 166 and Parāśara XI. 19 say that a brāhmaṇa may eat the

1846. शबर on जै. III. 7. 29 remarks, 'शामित्रमपि आध्वर्यवे समाम्नानादध्वर्युणा कर्तव्यम्। तस्मादाम्नानादध्वर्युः शमिता.'

1847. कौत्साद्राजानं क्रीणीयाद्यस्माद्वा ब्राह्मणादित्युक्त्वाहाप्यब्राह्मणादिति। आप. श्रौ. X. 20. 12.

1848. यस्य त्रैवार्षिकं वित्तं पर्याप्तं भृत्यवृत्तये। अधिकं वापि विद्येत स सोमं पातुमर्हति॥ नारद (दत्ताप्र. 7). This is the same as मनु. XI. 7, but नारद reads वित्तं for भक्तम्.

1849. आर्धिकः कुलमित्रं च दासगोपालनापिताः। एते शूद्रेषु भोज्यान्ना यश्चात्मानं निवेदयेत्॥ विष्णुधर्मसूत्र 57. 16.

food of these four and of his own barber. Haradatta on Gaut. 17. 6 and Aparārka (p. 244) remark that a brāhmaṇa can take the food of these persons among śūdras only in the event of extreme calamities. From this it appears that up to the 12th century A. D. the peremptory prohibition contained in this text was either unknown or was not much respected. The exclusiveness of caste in matters of food and marriage was made more strict by the Kalivarjya texts. Vide above (pp. 869 and 885) as to how Parāśara himself was overruled by this text.

32. 'Pilgrimages to very distant holy places' (l. 26).

A brāhmaṇa was called upon to tend his Vedic or gṛhya fires. If he went to distant places on pilgrimage this duty would be interfered with. It is provided by Āp.[1850] Śr. IV. 16. 18 that even when on a journey the *agnihotrin* has, after turning his face in the direction of his fire altar, to go mentally over the whole procedure of his daily fire worship and the Darśapūrṇamāsa. The Gobhila-smṛti II. 157 says the same. The Smṛtikaustubha[1851] says that this prohibits pilgrimage to holy places beyond the sea or on the borders of Bharatavarṣa. This text prohibits a brāhmaṇa from going to distant places on pilgrimage, but it does not prevent him from undertaking a journey for earning wealth for performing sacrifices. K. V. N. (folio 10a) quotes a text of Satyavrata to this effect.

33. 'The rule that a pupil should habitually observe the same behaviour towards the wife of the *guru* as towards the guru himself' (l. 27). Āp. Dh. [1852] S. I. 2. 7. 27, Gaut. II. 31–34, Manu II. 210, Viṣṇu Dh. S. 32. 1–2 prescribe that a student should perform the same acts of honour and obedience towards the wife or wives of his teacher as towards the teacher (except holding her feet in doing obeisance and eating the leavings of the food). As students were often grown-up young men and the teacher's wife might often be a young lady, Manu II. 212,

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1850. प्रवसन् विहारमभिमुखो याजमानं जपति । आप. श्रौ. IV. 16. 18 ; मनसा नैत्यकं कर्म प्रवसन्नप्यतन्द्रितः । उपविश्य शुचिः सर्वं यथाकालमनुद्रवेत् । गोभिल II. 157.

1851. या च प्रत्यन्तदेशगततीर्थयात्रा पौराणी सा कलौ नेति । स्मृतिकौ. p. 478 ; धनान्यर्जयितुं युक्तः प्रवासो ह्यग्निहोत्रिणः । धनैर्यत्संभवेदिज्या तीर्थाद्यर्थं न तु व्रजेदिति सत्यव्रतस्मरणात् । कलिवर्ज्यवि. folio 10a.

1852. अन्यत्रोपसङ्ग्रहणादुच्छिष्टाशनाच्चाचार्यवदाचार्यदारे वृत्तिः । आप. ध. I. 2. 7. 27 ; तद्भार्यापुत्रेषु चैवम् । नोच्छिष्टाशनस्नापनप्रसाधनपादप्रक्षालनोन्मर्दनोपसंग्रहणानि । विप्रोष्योपसंग्रहणं गुरुभार्याणाम् । गौ. II. 37–39.

216, 217 (that are the same as Viṣṇu Dh. S. 32. 13–15) provide that a pupil full twenty years old should not show honour to the young wife of his teacher by clasping her feet, but that he may prostrate himself on the ground before the teacher's young wife in performing obeisance and that he may hold her feet in obeisance only (once) when he returns from a journey. This text accepts the principle underlying the special rules laid down by Manu and Viṣṇu and prohibits the daily touching of the feet of the guru's wife on the part of the pupil. The Sm.[1853] Kau. and Dharmasindhu (III p. 358) hold that this sets aside the rule laid down in Yāj I. 49 that a perpetual student may stay till his death with his teacher or with the teacher's son or (in default of both) with the teacher's wife.

34. 'The modes of maintenance conceded to brāhmaṇas in times of distress (or calamity)' (I. 28).

The special modes of maintenance prescribed for brāhmaṇas were receiving gifts, teaching the Veda and officiating as priests (Gaut. X. 2, Āp. Dh. S. II. 5. 10. 5, Manu X. 76, I. 88, Vas. II. 14, Yāj. I. 118). But it was recognised from very ancient times that if a brāhmaṇa could not maintain himself by following the above modes of earning wealth he could in a season of distress pursue the avocations peculiar to a kṣatriya or vaiśya (Gaut. VII. 6–7, Baud. Dh. S. II. 2. 77–81, Vas. II. 22, Manu X. 81–82, Yāj. III. 35)[1854]. Vide H. of Dh. vol. II. pp. 118–133 for detailed treatment of this matter and for the restrictions imposed even when brāhmaṇas were allowed to follow the avocations of kṣatriyas and vaiśyas. The Kalivarjya prohibition is merely one on paper. From ancient times till now brāhmaṇas have pursued all sorts of avocations and hardly any importance has been attached to this dictum.

35. 'Not accumulating any wealth (or grains) for the morrow' (I. 28). Manu IV. 7 and Yāj. I. 128 provide that brāhmaṇas are of four kinds, viz. those who accumulate grain of the capacity of a *kusūla*, those who accumulate grain of the capacity of a *kumbhī*, those that accumulate grain enough to satisfy

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1853. गुरुपत्नीसमीपे गुरुपुत्राभावे चिरं स्थितिर्विहिता सा निषिध्यते। न तु गुरुवत्प्रति- ... इति मनूक्ता पूजा ' कलिवर्ज्यति पदेन पूजानभिधानात् । स्मृतिकौ. p. 478; but कलिवर्ज्यवि. folio 10a asays, शिष्यस्य गुरुपत्न्यां गुरुवद् वृत्तिः—गुरुवत्प्रतिपूज्यास्तु सवर्णा गुरुयोषित इत्यादि मनूक्ता '

1854. क्षात्रेण कर्मणा जीवेद्विशां वाप्यापदि द्विजः । निस्तीर्य तामथात्मानं पाव- यित्वा न्यसेत्पथि ॥ या.III. 35.

their needs for three days and those who do not collect grain even for the next day. The smṛtis prescribe that each later one is superior in merit to each preceding one. The commentators differ as to the meaning conveyed by kusūladhānya (some holding that it means one who has accumulated grain for three years, while others say it means one who has grain for 12 days) and kumbhīdhānya (a person accumulating grain for a year, or grain for six days). Vide H. of Dh. vol. II. p. 110, note 234 and p. 641 note 1502. The Mit. on Yāj. I. 128 says that the advice not to accumulate corn even for three days or one day is not addressed to all brāhmaṇas, but to those only who are called yāyāvara[1855]. This explanation of the Mit. indicates that the Kalivarjya text on this point was either not known to the Mit. or was not much thought of by it. The Kalivarjya text provides that the ideal of extreme poverty and absence of acquisitiveness for brāhmaṇas was not to be insisted upon in the Kali age.

36. 'The acceptance of the kindling of a log of wood (i. e. setting up sacred Vedic fire) at the time of the *homa* of Jātakarma for the purpose of securing long life to the child born to a person' (l. 29). The *araṇis* are two logs of Aśvattha tree from which fire is produced by attrition, which (fire) is used for kindling the gārhapatya fire. In certain śākhās, it is the practice to kindle fire from araṇis and to use it for the homa in the Jātakarma rite. This fire was to be used in the subsequent rites for the child such as cūḍā, upanayana, marriage. It was supposed that this enabled the child to live long.[1856] The Saṁ. K. quotes a pariśiṣṭa text to this effect.[1857]

37. 'Constant journeys by brāhmaṇas' (l. 30). The Mahābhārata (Śānti 23. 15)[1858] says, 'As a snake swallows mice hiding in holes, the earth swallows two persons viz. a king who does not fight (an invader) and a brāhmaṇa who does not engage

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1855. For the two kinds of brāhmaṇas, viz. śālīna and yāyāvara, vide H. of Dh. vol. II pp. 641-42 *n*. 1502-1505.

1856. कस्यचिच्छाखायां जातकर्महोमे प्रजाजीवनार्थमरणिपरिग्रहो विहितः। कृष्णभट्ट on नि. सि. pp. 1299-1300.

1857. परिशिष्टान्तरे तु कुमारस्य जातस्य अरणीं षोडशाङ्गुलाम्। आहृत्य चोत्तरारणीं ताभ्यामग्निं तु मन्थयेत्। ... ... तस्मिन् कुमारकर्माणि विवाहान्तानि कारयेत्। सं. कौ. under जातकर्म.

1858. भूमिरेतौ निगिरति सर्पो बिलशयानिव। राजानं चाविरोद्धारं ब्राह्मणं चाप्रवासिनम्॥ शान्ति 23. 15. Vide also Sabhā 55. 14, Śānti 57. 3 and Anuśāsana 36. 16 for almost the same words.

in travel' (for acquiring learning from famous teachers). This text only forbids taking aimlessly to long journeys but not those for study or for religious purposes.

38. 'Blowing on fire with the mouth' in order to kindle it into flames (I. 30). Gaut. IX. 32, Manu IV. 53 and Brahmapurāṇa 221. 102 forbid the blowing on fire with the mouth (as in doing so it is likely that drops of saliva from the mouth may fall into the fire and pollute it). Haradatta on Āp. Dh. S. I. 5. 15. 20 notices that in the Vājasaneya Śākhā it is said that fire should be kindled into flames by blowing upon it with the breath from the mouth since it sprang from the mouth of the Creator (as stated in the Puruṣasūkta, Ṛg. X. 90. 13). Therefore, acc. to Haradata and the Gobhila-smṛti (I. 135-136)[1859] the *śrauta* fire could be kindled by blowing upon it with the mouth, but *smārta* fire or ordinary fire should not be kindled in that way (but only by using a fan or a bamboo cylindrical piece). The Kalivarjya text forbids blowing with the mouth even on śrauta fire.

39. 'Allowing social intercourse to women who have become polluted by rape and the like (when they have performed prāyaścitta) as prescribed in the śāstras' (I. 31).[1860] Vas. 28. 2-3 state, 'when a woman is polluted by being raped or kidnapped by a thief, she should not be abandoned; one should wait till her monthly illness (making her undergo certain expiations till then) and she becomes pure after it.' Atri (V. 2-3) has the same verses, which are quoted (from Vas.) by Viśvarūpa on Yāj. III. 256 (p. 133. Tri. ed.) and explained at great length. The Matsyapurāṇa 227. 126 is liberal enough to say that the man who commits rape should be punished with death but the woman raped incurs no blame. Parāśara (X. 27) provides that if a woman is raped by an evil-doer only once she becomes pure by undergoing the Prājāpatya expiation and after the following monthly illness. Even so late a smṛti writer as Devala provides that if a woman of any class is raped by *mlecchas* and she conceives she can be purified by the expiation of Sāntapana.

1859. मुखेनैके धमन्त्यग्निं मुखाद्ध्येषोऽध्यजायत । नाग्निं मुखेनेति च यल्लौकिके योजयन्ति तत् ॥ गोभिलस्मृति I. 136. This is q. by the स्मृतिच. I. p. 212. नाग्निं मुखेन is मनु IV. 53.

1860. योषा गर्भं विधत्ते या म्लेच्छात्कामादकामतः । ब्राह्मणी क्षत्रिया वैश्या शूद्रा वर्णेतरा च या । अभक्ष्यभक्षणं कुर्यात्तस्याः शुद्धिः कथं भवेत् । कृच्छ्रं सान्तपनं शुद्धिर्घृतेर्योनिश्च पाचनम् ॥ देवल 48-49.

But this text is harsher on such innocent and unlucky women when it says that they cannot be restored to social intercourse even after undergoing expiation.

40. 'Begging of food by a *sannyāsin* from members of all varṇas (including śūdras) according to the rules of the śāstra' (l. 32). The Sm. M. p. 201 (on varṇāśrama) quotes Kāṭhaka Brāhmaṇa,[1861] Āruṇi Up., Parāśara (in prose) to the effect that a *yati* may beg for food from members of all varṇas. Baud. Dh. S. II. 10. 69[1862] also quotes a verse which allows the begging of food from all varṇas to a *yati*. Vas. X. 7 requires a *yati* to beg at seven houses not selected beforehand and in X. 24 states that he should subsist on what food he gets at the houses of brāhmaṇas.[1863] The present text requires even the *yati* to observe caste rules as to food.

41. 'Not using for ten days fresh rain water' (l. 33). Haradatta on Āp. Dh. S. I. 5. 15. 2, Bhaṭṭoji on Catur. (p. 54), Sm. Kau. p. 479 quote a verse, 'she-goats, cows, she-buffaloes and brāhmaṇa women become free from impurity (due to delivery) after ten nights and so does fresh rain water accumulated on the ground'. According to this the long period of ten days in the case of rain water is set aside. But Bhaṭṭoji notes that according to another smṛti 'rain water falling at the proper season is pure, but it is not to be used for drinking for three days; when rain falls at an unusual season rain water is impure for ten days and if a man drinks it within that period he should abstain from food for one day and night'. Bhaṭṭoji remarks that the Kalivarjya text only sets aside waiting for ten days, but does not set aside the rule against drinking it for three days.

42. '(Payment of) the fee demanded by the teacher' at the end of the period of brahmacarya (l. 33).

1861. काठकब्राह्मणे 'चतुर्वर्णेषु भैक्ष्यचर्यं चरेत् पाणिपात्रेणाशनं कुर्यादौषधवत्प्राश्नीयात्प्राणधारणार्थं यथा मेदोवृद्धिर्न जायते'। स्मृतिमु. (वर्णा.) p. 201.

1862. भैक्ष्यं वा सर्ववर्णेभ्य एकान्नं वा द्विजातिषु । अपि वा सर्ववर्णेभ्यो न चैकान्नं द्विजातिषु । बौ. ध. सू. II. 10. 69.

1863. सप्तागाराण्यसङ्कल्पितानि चरेद्भिक्षाम् । ब्राह्मणकुले यावल्लभेत तद्भुञ्जीत सायं प्रातर्मधुमांसवर्जम् । वसिष्ठ X. 7 and 24.

1864. अजा गावो महिष्यश्च ब्राह्मणी च प्रसूतिका । दशरात्रेण शुध्यन्ति भूमिष्ठं च नवोदकम् ॥ q. by हरदत्त on आप. ध. सू. I. 5. 15. 2; 'काले नवोदकं शुद्धं न पिबेच्च त्र्यहं च तत् । अकाले तु दशाहं स्यात्पीत्वा नाद्यादहर्निशम् ॥ इति स्मृत्युक्तस्य दशाहप्रतिषेधस्यैवं प्रतिप्रसवो न तु त्र्यहप्रतिषेधस्येति दर्शयति । भट्टोजि on चतुर्वि. p. 53.

The ancient practice was to make no agreement as to fees for teaching. Vide Br. Up. IV. 1. 2. Gaut. (II. 54–55) prescribes[1865] that at the end of his studies the student should request the teacher to accept the wealth that he could offer or ask the teacher what should be given and after paying or doing what was required by the *guru* or if the teacher permitted him to go without demanding anything the student should take the ceremonial bath. Vide Manu II. 245–246 and H. of Dh. vol. II. pp. 360–361 for details. Yāj. I. 51 provides that at the end of his studies the student may give to the teacher what he desires (or a cow) according to his ability or may with his permission take the ceremonial bath (without paying anything). On account of these provisions we have stories in the ancient literature that very rarely teachers or their wives made fanciful demands. This Kalivarjya text only sets aside the requirement of paying what the guru demands, but does not prohibit the voluntary gift of a fee by the student.[1866]

43. 'The engagement of a śūdra for such acts as cooking and the like in the houses of brāhmaṇas and the rest' (1. 34). Āp. Dh. S. (II. 2. 3. 1–8) requires that[1867] the food for Vaiśvadeva should be prepared by pure men of the first three varṇas and also optionally allows a śūdra to be a cook for an *ārya* provided he is under the supervision of men of the first three varṇas, provided he sips water whenever he touches the hair, any limb or his garment, provided he cuts the hair (on his head and his body), the beard and nails every day or every 8th day of the month or on the new and full moon day and provided he bathes with the clothes on. It is this permission that is set aside by this Kalivarjya text.

44. 'Suicide of very old people by falling into fire or from a precipice' (1. 35).

This is analogous to No. 13 above. Atri did not condemn suicide in certain cases. He states,[1868] (verses 218–219) 'if one be

1865. विद्यान्ते गुरुरर्थेन निमन्त्र्यः । कृत्वानुज्ञातस्य वा स्नानम् । गौ. II. 54–55.

1866. विद्यान्ते गुरुप्रेरणया दक्षिणादानं यथा सान्दीपनये श्रीकृष्णेन मृतपुत्रस्य । न तु गुरवे दक्षिणामात्रं चोदितेतिपदद्वयस्यार्थापत्तेः । स्मृतिकौ. p. 479.

1867. आर्याः प्रयता वैश्वदेवेऽन्नसंस्कर्तारः स्युः ।...आर्याधिष्ठिता वा शूद्राः संस्कर्तारः स्युः । तेषां स एवाचमनकल्पः । अधिकमहरहः केशश्मश्रुलोमनखवापनम् । उदकोपस्पर्शनं च सह वाससा । अपि वाष्टमीष्वेव पर्वसु वा वपेरन् । आप. ध. सू. II. 2. 3. 1–8.

1868. वृद्धः शौचस्मृतेर्लुप्तः प्रत्याख्यातभिषक्क्रियः । आत्मानं घातयेद्यस्तु भृग्वग्न्यनशनाम्बुभिः । तस्य त्रिरात्रमाशौचं द्वितीये त्वस्थिसञ्चयम् । तृतीये तूदकं कृत्वा चतुर्थे श्राद्धमाचरेत् । अत्रि 218–219 q. by मेधातिथि on मनु V. 89, मिता. on या. III. 6, अपरार्क p. 942.

old (beyond 70), if one cannot observe the rules of bodily purification (owing to extreme weakness), if one is so ill that all medical help is discarded, and if one in these circumstances kills himself by throwing himself from a precipice or into fire or water or by fasting, mourning should be observed for him for three days and śrāddha may be performed for him.' Aparārka (p. 536) quotes several smṛtis to the effect that a very old man or one suffering from very serious illness, one who has no desires left and has carried out his tasks may bring about his death by entering fire or water or falling from a precipice and he will incur no sin. Vide H. of Dh. vol. II. pp. 926–927 for further details. This text may also be taken as forbidding suicide by falling from a precipice or into fire as an expiation in the case of those that are guilty of mahāpātakas knowingly committed. The Mit. on Yāj. III. 226 quotes a smṛti to this effect[1869]. The Śuddhitattva holds (pp. 284–285) that suicide by entering water and the like is allowed in Kali only to śūdras and forbidden to brāhmaṇas and others.

45. 'The performance of ācamana (purificatory sipping of water) by śiṣṭas in as much water as is sufficient for slaking the thirst of a cow' (I. 36).

Manu V. 128, Vas. III. 35, Baud. Dh. S. I. 5. 65, Yāj. I. 192, Viṣṇu 23. 43 provide[1870] that water collected on the ground is pure (and may be used for ācamana) provided it is sufficient in quantity to slake the thirst of a cow. But this text forbids on hygienic grounds the use of small quantities of water collected on the ground for sipping and similar purposes.

46. 'The residence of an ascetic in the house near which he happens to be in the evening' (I. 38).

Acc. to Āp. Dh. S. II. 9. 21. 10 and Manu VI. 43, 55–56, an ascetic was to kindle no fire, was to be houseless and was to beg only once a day in the afternoon or evening when no smoke ascends from the kitchens of people, when the embers have been extinguished, when people have finished their meals &c. Vas. (X·

1869. यः कामतो महापापं नरः कुर्यात्कथंचन । न तस्य निष्कृतिर्दृष्टा भृग्वग्निपतनाद्दृते ॥ q. by मिता. on या. III. 226. जलप्रवेशादिकं तु कलौ शूद्रस्यैव । ब्राह्मणादीनां तु आदित्यपुराणेन सगुणाद्यशौचप्रकरणोक्तेन निषेधात् । शुद्धितत्त्व pp. 284–285.

1870. शुचि गोतृप्तिकृत्तोयं प्रकृतिस्थं महीगतम् । या. I. 192; प्रदरादपि या गोस्तर्पणसमर्थाः स्युः । वसिष्ठ III. 35; आपः पवित्रं भूमिगता गोतृप्तिर्यासु जायते । बौ. ध. सू. I. 5. 65.

12-15) provides[1871] that a *sannyāsin* was to change his residence frequently, was to stay at the boundary of the village or in a temple, or in an empty house or at the bottom of a tree and should constantly live in a forest. Śaṅkha (VII. 6) states that an ascetic should stay in an empty house or he may stay wherever he may be when the sun sets. This provision of Śaṅkha is set aside by the Kalivarjya text. Another meaning of the words, according to Kṛṣṇabhaṭṭa on the Nir. S. (p. 1310), is that this runs counter to the recommendation of Manu VI. 56 that an ascetic should go for begging to the houses in a village in the evening when all smoke from kitchens has ceased i. e. by this text he is allowed to beg in the noon. In a way this appears to be a better explanation.

The above is a complete list of all Kalivarjyas quoted from the Ādityapurāṇa (except one or two). Some of the Kalivarjyas not included here, but included in other texts cited above will also be now set out for the sake of completeness of treatment.

47. 'Resorting to *sannyāsa*'. Vyāsa quoted above (n. 1793) forbade sannyāsa in the Kali age after 4400 years of it had elapsed, but then Devala [1872] made an exception to this extent that as long as the division of society into four varṇas existed and as long as the Veda was studied sannyāsa could be resorted to even in Kali. The Nir. S. explains that what is forbidden is the sannyāsa with three daṇḍas and not the sannyāsa with one daṇḍa. Baud. II. 10. 53 (ekadaṇḍī vā) gives an option that a sannyāsin may carry three staffs or one, while Yāj. III. 58 speaks of a *yati* as only tridaṇḍī. Daṇḍa meas a staff and also 'restraint, curbing'. Manu XII. 10 (same as Dakṣa VII. 30) declares that that man is called *tridaṇḍī* who has restraint over his body, speech and mind. Dakṣa[1873] also says that a *yati* is not called *tridaṇḍī* by carrying three bamboo staffs, that he is called tridaṇḍī who has

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1871. अनित्यां वसतिं वसेत् । ग्रामान्ते देवगृहे शून्यागारे वा वृक्षमूले वा । अरण्यनित्यः । वसिष्ठ X. 12-13 and 15; शून्यागारनिकेतः स्याद्यत्रसायंगृहो मुनिः । शङ्ख VII. 6. The words यत्रसायंगृहो मुनिः occur also in वनपर्व 12. 11. गृहशब्दो गृहस्थवेश्मपरः सायंशब्दो मध्योपवाचकः । ... भिक्षार्थं प्रविष्टस्य तत्र काले गृहवासो न युक्त इति तात्पर्यम् । अत एव श्रुतिः । ग्रामं प्रविशेद्वासायामिति । स्मृतिकौ. p. 479.

1872. यावद्वर्णविभागोऽस्ति यावद्वेदः प्रवर्तते । तावन्न्यासोऽग्निहोत्रं च कर्तव्यं तु कलौ युगे ॥ देवल q. by नि. सि. III पूर्वार्ध p. 370, स्मृतिच. (वर्णाश्रम p. 176 quoting it as from व्यास), यतिधर्मसंग्रह pp. 2-3.

1873. वैणवेन त्रिदण्डेन न त्रिदण्डीति कथ्यते । अध्यात्मदण्डयुक्तो यः स त्रिदण्डीति कथ्यते । दक्ष VII. 29. Several verses of दक्ष VII are quoted by अपरार्क on p. 953.

the spiritual restraint in him (v. 29). In I. 12–13 Dakṣa says that just as a girdle, deer skin and a wooden staff are the outward signs of a vedic student, so three staffs are the peculiar sign of a yati. Vide H. of Dh. vol. II. pp. 937–938 for further details. If the Kalivarjya text were meant to forbid sannyāsa altogether, it must be said that it was never honoured and even now thousands become sannyāsins every year. If, as the Nir. S. says, this text only forbids the carrying of three daṇḍas, it is a meaningless prohibition, giving importance only to outward symbols and not to the substance of the matter.

48. 'The observance of *agnihotra*' or 'the acceptance of three fires'. Vyāsa (n. 1793) forbade the performance of śrauta *agnihotra* along with *sannyāsa* in Kali, but an exception was made by Devala in favour of its observance as also of resort to sannyāsa on the grounds stated above (in No. 47). Some digests and authors such as the Nirṇayasindhu[1874] and Bhaṭṭoji explain that agnihotra of the sarvādhāna type is forbidden in Kali, but that of the ardhādhāna type is allowed. Agnihotra means '*ādhāna*', that is, setting up of the śrauta fires. When a man consecrates the three śrauta fires he may do so with half of his smārta fire and keep up the other half of the smārta fire. This is called *ardhādhāna*. If he does not keep the smārta fire separate, it is *sarvādhāna*. Laugākṣi quoted by the Nir. S. (III. p. 370), Bhaṭṭoji and others states this. The Mit. on Yāj. III. 45 mentions these two modes. Therefore, according to these explanations, sarvādhāna was allowed in former ages (and acc. to one interpretation up to 4400 years of Kali), while in Kali (or at least after 4400 years of Kali) only ardhādhāna is allowed.

49. 'Human sacrifice' (vide note 1798 giving extract from Nāradapurāṇa).

The Tai. Br.[1875] (III. 4. 1–19) contains a description of the procedure of human sacrifice. The oldest texts even do not show that a human being was killed. The whole procedure is

1874. अर्धाधानं स्मृतं श्रौतस्मार्ताग्न्योस्तु पृथक्कृतिः । सर्वाधानं तयोरैक्यकृतिः पूर्वयुगाश्रया । लौगाक्षि q. in स्मृतिच. acc. to निर्णयसिन्धु III. p. 370. अत्र पूर्वयुगाश्रितेति लौगाक्षिवाक्ये पूर्वयुगानि कृतादीनीत्येकोऽर्थः । अन्ये तु युगस्य पूर्वं कलेः पूर्वो भागः स चत्वार्यब्दसहस्राणीति पूर्वोक्तवाक्याच्चतुश्चत्वारिंशच्छतवर्षावच्छिन्नः तस्मिन् भागे सर्वाधानं कार्यं तदुत्तरं तु यावद्वर्णविभागोऽस्तीति वाक्यात् वर्णविभागपर्यन्तमर्धाधानमित्याहुः । नि. सि.

1875. ब्रह्मणे ब्राह्मणमालभते क्षत्राय राजन्यम् । मरुद्भ्यो वैश्यम् । तपसे शूद्रम् ॥ तै. ब्रा. III. 4. 1.

symbolical. The Vāj. S. (XXX. 5 ff.) has many passages in common with the Tai. Br. The Tai. Br. III. 4. 1 (= Vaj. S. 30. 5) begins, 'the brāhmaṇa should be offered to brahman (spiritual power), the kṣatriya to kṣatra (military power), the vaiśya to the Maruts' &c. Acc. to Āp. Śr. XX. 24, a brāhmaṇa or kṣatriya performs this sacrifice, whereby he attains power and valour and all prosperity. There are eleven sacrificial posts and eleven animals to be offered to Agni and Soma. After the rite of *paryagnikaraṇa* is performed on the brāhmaṇa and others, they are presented to the several deities and then discharged from the sacrificial posts, eleven goats are killed and oblations of their flesh and limbs are offered. Acc. to the com. on Vāj. S., it is begun on the 10th day of the bright half of Caitra and goes on for 40 days, which are occupied with 23 dīkṣās, 12 *upasads* and five *sutyas* (days on which soma is extracted). After this *yāga*, the *yajamāna* usually resorted to a forest as a sannyāsin.[1876]

50. 'Aśvamedha' (n. 1798). The Tai. S. V. 3. 12. 2 states,[1877] 'he who performs the Aśvamedha becomes free from (the sin of) brāhmaṇa murder'. In spite of this Vedic authority the Bṛhan-Nāradīya and other purāṇas prohibited it. But no one heeded this prohibition and numerous historic kings performed this sacrifice from at least 200 B. C. to Jayasing in the 18th century A. D. Vide H. of Dh. vol. II. pp. 1238–1239 and pp. 70–71 above for numerous historical performers of Aśvamedha.

51. 'Rājasūya' (acc. to the Garuḍapurāṇa, p. 929 above). This was a very complex rite extending over two years and could be performed only by a kṣatriya. Vide H. of Dh. vol. II. pp. 1214–1223 for a brief description. The Rājasūya was performed by the Kaliṅga Emperor Khāravela as he proclaims in his Hāthigumphā Inscription (E. I. vol. XX p. 71 at p. 79) and by queen Nāyanikā as stated in the Nāṇāghāṭ Inscription (A. S. W. I. vol. V. p. 60).

52. 'Perpetual studenthood' (n. 1798). Vedic students were of two kinds, *upakurvāṇa* (who offered some return or fee at the time when they returned home) and the *naiṣṭhika* (who remained students till death). Vide p. 764 n. 1471 above.

1876. त्रैधातवीयेयोदवसाय पृथगरणीष्वग्नीन्समारोह्योत्तरनारायणेनादित्यमुपस्थायारण्यमवतिष्ठेत । ग्रामं वा प्रविश्य त्रैधातवीयया यजेत । आप. श्रौ. XX. 24. 16–17.

1877. तरति ब्रह्महत्यां योऽश्वमेधेन यजते । तै. सं. V. 3. 12. 2.

Hārita, Dakṣa[1878] (I. 7) and others mention these two varieties, while Yāj. I. 49, Vedavyāsa I. 41 and Viṣṇu Dh. S. 28. 46 name and describe the *naiṣṭhika*. Manu II. 243–244, Yāj. I. 49–50, Vas. VII. 4–5 provide that a perpetual Vedic student should stay with his teacher till his own death, that on the teacher's death he should stay with the teacher's son or the teacher's wife or should tend fire, that if he curbs his senses till his death, he reaches the world of *brahma* (immortality) and is not born again. This was a very difficult mode of life, there were great temptations as the flesh is weak and therefore the Bṛhan-Nāradīya and others prohibited perpetual studenthood. Some works such as the Madanapārijāta (p. 16), the Kalivarjyavinirṇaya of Dāmodara, and the Nir. S. read 'dīrgha-kālam brahmacaryam' in place of 'naiṣṭhikam brahmacaryam' in the Bṛhan-Nāradīya.

53. 'Brahmacarya for long periods' (n. 1799). The Baud. Dh. S. (I.2.1–5) declares, "the term of studentship for Veda study as observed in ancient times lasted for 48 years, or 24 years, or 12 years for each Veda or at least one year for each *kāṇḍa* (of the Tai. S.) or it lasted till the Veda was committed to memory, as life is evanescent and as the Veda ordains 'let him kindle the sacred fires while his hair is still black'." The Āp. Dh. S. (I. 1. 2. 11–16) provides that the student's stay with the teacher's household should be 48 years, 24 years or 12 years at the lowest. Manu III. 1 also states that the vow of studying the three Vedas under a *guru* must be observed for 36 years or for half of that time or for a quarter of it or until the student has mastered (the Veda). These long periods of 48 years, 36 or 24 years for Veda study (before a man could become an householder) are here forbidden in Kali. This was nothing new. Yāj. I. 36 had allowed 12 years for each Veda or five and if a man did not want to study all vedas but only one he could finish his studenthood in five years. Only an extremely small number could have spent 48 or 36 years in Veda study. Śabara on Jai. I. 3. 3 held that this text of Baud. was opposed to the *śruti* about kindling fires when a man was a young householder with black hair and was to be discarded. Vide pp. 832–834 above for a

1878. द्विविधो ब्रह्मचारी उपकुर्वाणो नैष्ठिकश्च । तयोरुपकुर्वाणको व्याख्यातः । निष्ठां चेदृच्छेद्वा शरीरनिपाताद् गुरावासीत । हारीत q. by अपरार्क p. 71; द्विविधो ब्रह्मचारी स्याद्वाद्यो ह्युपकुर्वाणकः । द्वितीयो नैष्ठिकश्चैव तस्मिन्नेव व्रते स्थितः ॥ दक्ष I. 7. q. by स्मृतिच० I. p. 64.

discussion of this. The authors of the Samayamayūkha and the Sm. Kau. both of whom had before them the reading 'dīrghakālam brahmacaryam' held that this prohibition was aimed at the words of Āp. and Baud. and that the vow of perpetual studentship which was undertaken with a special purpose in view (viz. realization of *brahma* and non-return to *saṁsāra*) was not prohibited by the Kalivarjya text and that there was nothing wrong in the practice of perpetual studenthood among the Draviḍas.

54. 'Animal sacrifice.' In the Mārkaṇḍeya as quoted in Aparārka p. 929 above animal sacrifice was forbidden in the Kali age. Though popular feeling had gradually veered round to the view that meat should not be offered in śrāddhas, in madhuparka (No. 22 above), yet animal sacrifices were performed at all times and are even now performed, though very rarely.

55. 'Intoxicating drinks (*madya*)'. There were startling vicissitudes in the attitude to intoxicants.

In Vedic times *soma* was a beverage drunk by the priests and *surā* was a beverage for common men and usually not meant to be offered to the gods. Soma and surā are sharply distinguished (vide Tai. S. II. 5. 1. 1, Vāj. S. 19. 7, Śat. Br. V. 1. 5. 28). The Śat. Br. (V. 1. 5. 28) has the striking antithesis 'For, Soma is truth, prosperity, light; and surā is untruth, misery, darkness'. In the Sautrāmaṇī *iṣṭi* a brāhmaṇa had to be hired for drinking the dregs of surā offered in it and if a brāhmaṇa could not be found the surā was poured on an ant-hill (Tai. Br. I. 8. 6 and Śabara on Jai. III. 5. 14–15). It appears from the Kāṭhaka-saṁhitā XII. 12 that[1879] brāhmaṇas had by that time come to regard the drinking of surā as sinful. From Chān. Up. V. 10. 9 it appears that a drinker of surā was enumerated among five grave sinners. In the Āśv. gṛ. II. 5. 3–5 it is said that in the rites of the Anvaṣṭakā day when piṇḍas are offered to the male ancestors, the female ancestors viz. the mother, the paternal grandmother and great-grandmother are offered surā and the scum of boiled rice in addition[1880]. The Nir. S. (III.

1879. तस्माद् ब्राह्मणः सुरां न पिबति पाप्मना नेत्संसृज्या इति । काठकसं. XII 12. quoted by the तन्त्रवार्तिक on जै. I. 3. 7 p. 210 and by शङ्कराचार्य on वेदान्तसूत्र III. 4. 31.

1880. पिण्डपितृयज्ञकल्पेन । हुत्वा मधुमन्थवर्जं पितृभ्यो दद्यात् । स्त्रीभ्यश्च सुरामाचामामित्यधिकम् । आश्व. गृ. II. 5. 3–5.

p. 367) refers to this passage of the Āśv. Gṛ. and holds that the Kalivarjya text against intoxicants forbids this also.

Madya is a generic term applicable to all intoxicating drinks; *surā* is said to be of three kinds, viz. that prepared from molasses, that from honey (or madhūka flowers or from grapes) and that from corn flour (Manu XI. 94, Viṣṇu Dh. S. 22. 82 and Saṁvarta 117). The Viṣṇu Dh. S. (22. 83–84) specifies ten kinds of madya, all of which a brāhmaṇa was not even to touch. Gaut. II. 25[1881], Āp. Dh. S. I. 5. 17. 21, Manu XI. 95 forbid all kinds of *madya* to brāhmaṇas at all stages of life. Āp. I. 7. 21. 8, Vas. I. 20, Manu XI. 54, Viṣṇu Dh. S. 35. 1 hold that the drinking of *surā* is one of the five grave sins (mahāpātakas), while Yāj. III. 227 employs the word 'madya' in place of surā in this connection. Baud. Dh. S. I. 1. 22 however notes that among the five practices peculiar to the brāhmaṇas of the north was that of drinking rum and Baud. condemns it. The verses of Manu XI. 93–94 about the three kinds of surā have been the subject of frequent and varying interpretations. Viśvarūpa on Yāj. III. 222, the Mit. on Yāj. III. 253, Aparārka p. 1069 and others establish that the word 'surā' primarily applies to *paiṣṭī* (liquor prepared from flour) alone, that paiṣṭī is forbidden to all brāhmaṇas, kṣatriyas and vaiśyas, that it is the drinking of paiṣṭī alone that constitutes a mahāpātaka, that all intoxicating drinks are forbidden to brāhmaṇas in all ages, but intoxicants other than *paiṣṭī* (such as those prepared from molasses or madhūka flowers) are not forbidden to kṣatriyas and vaiśyas. Manu XI. 93 says that surā is the refuse of cooked food (rice); therefore members of the three higher castes should not drink surā. This clearly shows that Manu took surā as meaning only paiṣṭī (liquor prepared from rice flour). The Viṣṇu Dh. S. (22. 84) expressly says that kṣatriyas and vaiśyas are not polluted by touching the ten kinds of madyas specified by it. In the Udyogaparva (59. 5) both Vāsudeva (Kṛṣṇa) and Arjuna are described as intoxicated by drinking the liquor prepared from honey and the Tantravārtika establishes that there was nothing wrong in this as both were kṣatriyas. Intoxicants were not forbidden to śūdras. Brahmacārins of whatever varṇa had to abstain from intoxicants of all kinds. Aparārka[1882] (p. 63)

1881. मद्यं नित्यं ब्राह्मणः। गौ. II. 25 ; सर्वं मद्यमपेयम्। आप. ध. सू. I. 5. 17. 21.

1882. मद्यं नित्यं ब्राह्मणः। नित्यमिति वचनान्मद्यं कृतयुगादावपि ब्राह्मणेन वर्ज्यं क्षत्रियवैश्याभ्यां तु कलावेव। यत्तु ब्रह्मपुराणं ... नराश्वमेधौ मद्यं च कलौ वर्ज्यं द्विजातिभिः। अपरार्क p. 63.

after quoting the Brahmapurāṇa states that intoxicating drinks were forbidden to the three varṇas in Kali and to brāhmaṇas in all yugas (ages). But this is opposed to tradition. The Ādiparva (chap. 76) narrates[1883] that Śukrācārya prohibited for the first time brāhmaṇas from drinking intoxicants (vide H. Dh. vol. II. pp. 792-799 for detailed discussion of this topic). The Kalivarjya text forbids the drinking of intoxicants to all the three twice-born classes. But kṣatriyas and vaiśyas pay scant attention to this prohibition and even some brāhmaṇas in these days have taken to drink as a fashionable indulgence. The K. V. N. (folio 5a), Kṛṣṇabhaṭṭa[1884] and Sm. Kau. note that in the śākta treatises (called Vāmāgama) madya is allowed to be offered to the idol for all the three varṇas and to kṣatriyas in the propitiatory rites for Vināyaka and for birth on the Mūla constellation but this kalivarjya text forbids all that.

An analysis of these 55 kalivarjyas yields very interesting results. About one-fourth out of the above 55 relate to Śrauta matters. There are several texts forbidding Agnihotra, Aśvamedha, Rājasūya, Puruṣamedha, sattras, Gosava, animal sacrifices, while a few others are concerned with matters of detail in sacrifices (vide No. 11, 14-16, 29-30, 38, 48-51, 54). The first nine of these 55 are concerned with legal matters and relations. Some prohibitions are due to growing caste exclusiveness (No. 5, 10, 31, 40, 43). Others again spring from ideas of greater insistence on the sacredness of the marriage tie, a stricter morality and a demand for greater decency and purity, particularly in women (No. 2, 3, 4, 9, 15, 23, 24, 33, 39, 55). A few are based on notions of compassion, justice and equity (No. 1, 8, 24, 25, 42). Some owe their origin to the growing sacredness of the brāhmaṇa's person and his high social position (No. 7, 10, 27, 29, 30). Some must have been suggested by hygienic considerations (No. 12, 16, 28, 38, 41, 45), some arose from strict ideas of sin, expiation and ceremonial purity and impurity (No. 13, 18-21, 28, 44). Two of these, when they

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1883. यो ब्राह्मणोऽद्यप्रभृतीह कश्चिन्मोहात्सुरां पास्यति मन्दबुद्धिः । अपेतधर्मा ब्रह्महा चैव स स्यादस्मिँल्लोके गर्हितः स्यात्परे च । आदिपर्व 76. 67 = मत्स्यपुराण 25. 62.

1884. यद्वा वामागमादौ त्रैवर्णिकपुरस्कारेणोक्तं देवनैवेद्यादौ मद्यविधानं तदिह निषिध्यते । अथवा विनायकशान्तौ मूलजातशान्तौ च — सुरूपं (पुष्पं ?) चित्रं सुगन्धं च सुरां च त्रिविधामपि । तथा-सुरापोलिकमांसाद्यैर्नैवेद्यैर्भोजनादिभिः-इत्येताभ्यां यन्मद्यं मासे तत्र यद्यपि-मद्यमांससुरादीनि ब्राह्मणं (ब्राह्मणो ?) विनिवर्जयेदित्यनेन ब्राह्मणानां निषिद्धं तथापि क्षत्रियादिपुरस्कारेणापि कलौ निषिध्यत इति । कलिवर्ज्यवि. (folio 5a). कृष्णभट्ट p. 1291 gives a summary of this.

prohibit the stage of forest hermit and of sannyāsa, strike at the very root of the ancient scheme of āśramas.

The chapter on Kalivarjyas can be employed as a very effective answer to those who trot out the theory of the 'unchanging East'. Social ideas and practices undergo substantial changes even in the most static societies. Many of the practices, that had the authority of the Veda (which was supposed to be self-existent and eternal) and of such ancient smṛtis as those of Āp., Manu and Yāj., had either come to be given up or had become obnoxious to popular sentiment. This fiction of great men meeting together and laying down conventions for the Kali age was the method that was hit upon to admit changes in religious practices and ideas of morality. The Kalivarjya texts are also a complete answer to those who hold fast to the notion that dharma (particularly *ācāradharma*) is immutable and unchangeable (*aparivartanīya*). This chapter on Kalivarjya unmistakably shows how the most authoritative dicta of the Veda and of ancient sages and law-givers were set aside and held to be of no binding authority because they ran counter to prevailing notions and furnishes a powerful weapon in the hands of those who want to introduce reforms in the incidents of marriage, inheritance and other matters touching modern Hindu society. One can further see how some practices still persist in spite of the prohibitions in the Kalivarjya texts viz. marriage with one's maternal uncle's daughter, sannyāsa, agnihotra and even śrauta animal sacrifices (rarely).

Some works add two more to the Kalivarjya verses which mean, 'imprecations, omens, dreams, palmistry, listening for supernatural voices or messages, promises to make presents to a deity if a certain prayer were granted, prophetic replies by astrologers to questions, may rarely turn out to be true. One should not, however, resort to these through the desire to secure results from them. Similarly there are other actions also (that have to be abandoned) in the Kali age, because they have come to be included (by people) under improper acts (adharma).'[1865]

1885. अत्र शपथाः काशीस्थलोलार्कतीर्थस्नानादयः । शकुनाः पूर्णकुम्भादयः । स्वप्नाः पुरुषं कृष्णं कृष्णदन्तं पश्यति स एनं हन्तीत्यादिश्रुतिस्मृतिसिद्धाः । उपश्रुतिः सन्ध्यायां निर्जनकादिगृहेऽक्षतप्रक्षेपपूर्वकं स्वेष्टाविषयकतत्रस्थशब्दाकर्णनम् । उपयाचितमस्मिन् कार्ये सिद्धे भैरवाय सतैलं कृसरान्नं दास्यामीत्यादिसङ्कल्पः । आदेशः प्रश्नवशेन ज्योतिर्विद्भिर्भविष्यत्कथनम् । एतत्सूचितस्यापीष्टादेः प्रतिबन्धकादृष्टभावाभावाभ्यां सेवादिलाभनियमाभावाच्च शकुनादिलाभमात्रेण जयाद्युद्देश्यकविवाहादिप्रवृत्तिरुचितेति दृष्टार्थकार्यनिषेध एव क्रियते

(*Continued on the next page*)

From the fact that no ancient smṛti speaks of Kalivarjya, that the ancient commentaries of Viśvarūpa, Medhātithi and even Vijñāneśvara do not cite long lists of Kalivarjyas, that such lists first make their appearance in the Smṛtyarthasāra, the Sm. C. and Hemādri (works and authors of 12th and 13th centuries), the most probable inference is that these lists of Kalivarjyas were first put together at the earliest in the 10th or 11th century A. D.[1886]

(*Continued from the last page*)

न त्वदृष्टार्थस्य शास्त्र्यादेः । स्मृतिको. p. 477. The passage 'पुरुषं कृष्णं ... हन्ति' is quoted by शङ्कराचार्य on वेदान्तसूत्र III. 2.4. The कलिवर्ज्यवि. (folio 11b) explains 'शकुनाः काककपोतादिचेष्टाविशेषाः । ... उपश्रुतिश्चैलधावाविगृहपार्श्वे स्थित्वा चिन्तितार्थ-सूचनशब्दाकर्णनम् । ... आदेशः आशीर्वादः प्रश्नबलेन भविष्यकथनं वा ... एते च निषेधा इति वार्तिकानुसारिणः । निबन्धानुसारिणस्तु (निबन्धनानु° ?) धर्मविप्लवापत्तेरेते पर्युदासा एवेति मन्यन्ते ।.' वार्तिक means here the तन्त्रवार्तिक of कुमारिल and निबन्ध refers to the work of Prabhākara, who was called निबन्धनकार by the शास्त्रदीपिका on जै. II. 1. 1.

1886. An attempt at a systematical collection of the Kalivarjya texts and elucidation thereof was made by me in a paper submitted to the 8th All India Oriental Conference held at Mysore in December 1935. The paper was published in the Journal of the Bombay Branch of the Royal Asiatic Society, vol. 12 pp. 1-18 (New Series), 1936. Recently (1943) Mr. Batuknath Bhattacharya has published a book which contains a full treatment of Kalivarjyas. He states in the preface that it is 'an exact reprint of the thesis for Jogendrachandra Ghose Research Prize in Comparative Indian Law for 1933', that the subject is 'comparatively fresh and unexplored' and that the treatment is on lines marked out by the writer himself. He claims that his work is 'original as a whole except one section on secondary sons'. He does not state exactly in what year the thesis for a prize of 1933 was submitted to the Calcutta University. Presumably a thesis for a prize of 1933 should have been submitted in 1934 or 1935 at the latest. No satisfactory explanation is given why the thesis was published in 1943, so long after the year of the prize, nor does he mention my paper published so far back as 1936. It appears from quotations in the book as printed that it was probably retouched, if not actually written, after 1937. For example, on p. 76 he quotes a passage from the Smṛtimuktāphala (section on Varṇāśrama p. 201), which was published by Principal J. R. Gharpure only in 1937 in Devanāgarī. If the original thesis was written or revised in or after 1937 my paper published in 1936 should have been mentioned. Mr. Batuknath Bhattacharya in his paper 'the sources of dharma and their comparative authority' published in the Proceedings of the 10th Oriental Conference at Tirupati held in 1940 refers to my paper on Kalivarjyas (p. 160) as 'brief and compact'. This shows that he knew my paper years before he published his work in 1943. The claim of the subject being 'unexplored' and the thesis being 'original' is hardly admissible.

CHAPTER XXXV

CUSTOMS IN MODERN INDIAN LAW

Though an elaborate treatment of customs in modern Anglo-Indian Law is far beyond the scope of the present work, yet a few words on customs in modern times may not be altogether out of place here. When the British began to acquire political domination in India they realized the importance attached to customs by all persons in India and the Charter of the Mayor's court at Bombay in 1753, unconsciously following the ancient dicta of Manu (VII. 203) and Yāj. (I. 343), contains the earliest trace in British royal charters of a reservation to the peoples of India of their laws and customs.[1887] The British Parliament and the Indian Legislatures have allowed customs to occupy a very high place in the administration of law and justice. The preamble to 21 Geo. III chap. 70 (1781 A. D.) recited that one of the purposes for which the Act was passed was that the inhabitants of Bengal, Bihar and Orissa should be maintained and protected in the enjoyment of all their laws, *usages*, rights and privileges and sec. 17 of that Act provided among other things that, in the case of the inhabitants of Calcutta, their inheritance and succession to lands, rents and goods and all matters of contract and dealing between party and party shall be determined in the case of Mahomedans by the laws and usages of Mahomedans and in the case of Gentus by the laws and usages of Gentus[1888] and, where only one of the parties shall be a Mahomedan or Gentu, by the laws and usages of the defendant. 37 Geo. III chap. 142 (1796 A. D.), sec. 13, Bombay Regulation IV of 1827, sec. 26, the Government of India Act of 1915 (5 and 6 Geo. V chap. 61, sec. 112), Government of India Act 1935 (25 Geo. V chap. 2, sec. 223), the

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1887. Vide *Lopes v. Lopes* 5 Bom. H. C. R. (O. C. J.) 172, 183.

1888. The word 'Gentu' (or Gentoo) was the Portuguese word for 'Gentile' and appears to mean a pagan inhabitant of Hindustan who is not a Mahomedan. Its use in a judicial document first occurs in the judgment of Lord Chief Justice Willes in *Omichand v. Barker* (Durnford's Reports of cases, 1737-1769, p. 538). Vide on the word Gentoo 'Khojas and Memons case' in Perry's Oriental cases 110, 123 and *Lopes v. Lopes* 5 Bom. H. C. R. (O. C. J.) 172, 185-186.

Madras Civil Courts Act (III of 1873, sec. 16), the Bengal, North-west Provinces and Assam Civil Courts Act (XII of 1887 sec. 37), Central Provinces Laws Act (XX of 1875, sec. 5), the Oudh Laws Act (XVIII of 1876, sec. 3), the Bengal Laws Act (XVI of 1872, sec. 5) enact that the custom of the parties or of the defendant shall be the rule of decision in matters of succession and inheritance, marriage, caste, religious institutions and the like.

The burden of proving a custom opposed to the general law or in derogation of the ordinary rights of another lies heavily on the person alleging it.[1889] The decided cases lay down several essentials of a valid custom. In order to make a particular custom valid it must be proved to be immemorial or ancient, uniform, certain, reasonable, obligatory and it must not be immoral or opposed to public policy or to any express enactment of the Legislature. What antiquity must be proved before a custom can be accepted as valid depends upon the circumstances of each case.[1890] When it is said that a custom must be ancient it is not meant that the antiquity must be carried back to a period beyond the memory of man. According to the Mit. on Yāj. II. 27 *smārta-kāla* (time within living memory) in relation to possession means a period of one hundred years, while according to Kātyāyana and Vyāsa it is only a period of sixty years.[1891] On evidence of the prevalence of a custom even for 20, 30, 80 or 90 years the Courts have held that a presumption may arise that the custom is ancient and that if the presumption is not rebutted the Court may accept it as a valid and ancient custom.[1892] Many instances have generally to be adduced for proof of a custom. No hard and fast rule can be laid down about the number of instances required to prove a

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1889. *Neelkisto Deb v. Beer Chunder* 12 Moo. I. A. 523, 542; *Shiba Prasad v. Prayagkumari* 59 I. A. 331, 345; *Babu Narayan v. Saboosa* 46 Bom. L. R. 312 (P. C.), 314.

1890. *Subhani v, Nawab* 68 I. A. 1, followed in *Panchanon Roy v. Fazlur Rahman* 76 C. L. J. 479.

1891. भुक्त्या पैतामही भुक्तिः पैतृकी चापि संमता । त्रिभिरेतैरविच्छिन्ना स्थिरा षष्ट्या त्रिपूरुषी मता ॥ कात्या. q. by अपरार्क p. 636; वर्षाणि विंशतिं भुक्त्वा स्वामिनाव्याहता सती । भुक्तिः सा पौरुषी भूमेर्द्विगुणा तु द्विपौरुषी । त्रिपौरुषी च त्रिगुणा न ततोऽन्वेष्य आगमः ॥ व्यास q. by स्मृतिच. II. p. 75.

1892. *Mahamaya Debi v. Haridas* 42 Cal. 455, 472; *Garurudhwaja v. Saparandhwaja* 27 I. A. 238; *Basant v. Brijraj* 62 I. A. 180, 193; *Parshottam v. Venichand* 45 Bom. 754, 767.

custom.[1893] In certain cases it has been held that specific instances are not absolutely necessary, but the opinions of persons likely to know the existence of the custom is entitled to great weight, even though they may not be able to cite specific instances.[1893a] Customs once prevalant, particularly family customs, may come to be discontinued on account of accident, *change* in popular sentiment or by the concurrent will of all the members concerned.[1894] Customs must be strictly construed and cannot be extended by analogy or parity of reasoning. Because in a particular caste marriage with a maternal uncle's daughter is allowed by custom it does not follow that marriage with a maternal aunt's or paternal aunt's daughter will necessarily be valid. Vide H. of Dh. vol. II. p. 467 notes 1095-6. The evidence about a custom should be such as to prove the uniformity and continuity of the usage, the conviction of those following it that they were acting in accordance with law and the consciousness of obligatorines and the custom should not spring from mere habit, imitation and ignorance or mutual arrangement.[1895] A custom must not be unreasonable. A custom of excluding daughters from inheritance was held to be not unreasonable according to the ideas of the Hindu community.[1896] A custom that only members of certain castes (and not of others) were entitled to make use of a temple and to worship therein was held not unreasonable in India, though it may appear obnoxious to cultured people at the present day.[1897]

Customs must not be immoral. Whether a custom is immoral is to be judged by the sense of the whole community[1898].

1893. Vide *Ratilal v. Motilal* 27 Bom. L. R. 880; *Chandika v. Muna* 29 I. A. 70.

1893a. Vide *Ahmed Khan v. Channi Bibi* 52 I. A. 372; *S. K. Wodeyar v. Ganapati* 37 Bom. L. R. 584; *Ajai Verma v. Vijai Kumari* 41 Bom. L. R. 700 (P. C.); *Madhavrao v. Raghavendrarao* 48 Bom. L. R. 196.

1894. *Vannia Kone v. Vannichi* 51 Mad. 1 (F. B.); *Rajkishen Singh v. Ramjoy* 1 Cal. 186, 195-96.

1895. *Mathura v. Esu* 4 Bom. 545, 557; *Gopalayyan v. Raghupatiayyan* 7 Mad. H. C. R. 250 (F. B.), 254; *Ramrao v. Yeshvantrao* 10 Bom. 327.

1896. *Bhau v. Sundrabai* 11 Bom. H. C. R. 249, 277.

1897. *Anandrao v. Shankar* 7 Bom. 323; *Sankaralinga v. Rajeshwar* 31 Mad. 236 (P. C.); *S. K. Wodeyar v. Ganapati* 37 Bom. L. R. 584; but vide *Narhari v. Bhimrao* 39 Bom. L. R. 1295 (about a tank).

1898. *Deivanayaga v. Muthu* 44 Mad. 329, 333.

A custom which authorizes a woman of the lower castes to contract a second marriage without divorce on payment of a certain sum to the caste was held to be immoral[1899] and the Bombay High Court refused to recognize the authority of the caste to declare a marriage void or to give a woman permission to remarry without a release from the husband.[1900] The adoption of girls by dancing girls (*naikins*) has not been recognized by the Bombay High Court,[1901] though the Madras High Court would recognize such an adoption if there was no intention to make it for purposes of prostitution.[1902] Dagger marriages are practised among certain castes. The Brahmapurāṇa (chap. 111. 15 and 44–46) states that among kṣatriyas there are several forms of marriage such as forcibly carrying away the bride (which is the form called rākṣasa) or marriage with the weapons (of the bridegroom). In modern times dagger or sword marriages have not been held valid by the courts even among śūdras; vide *Maharaja of Kolhapur v. Sundaram* 48 Mad. 1, *Ram Saran v. Mahabir* 61 I. A. 106.

Many customs and usages have been expressly forbidden by the Central Indian or Provincial Legislatures e. g. *Sati*[1903], female infanticide,[1904] slavery,[1905] marriages of children under a certain age,[1906] the dedication of women as *devadāsis* to temples or idols.[1907] This being so, no court will allow a party to plead a custom against these positive enactments. It was recognised in a number of cases that in the Bombay Presidency[1908] a *vatandar joshi* had the right to recover by suit from

1899. *Reg v. Karsan* 2 Bom. H. C. R. 117, 125; *Uji v. Hathi* 7 Bom. H. C. R. (A. C. J.) 133.

1900. *Keshav v. Bai Gandi* 39 Bom. 538, 543.

1901. *Mathura v. Esu* 4 Bom. 545; *Hira v. Radha* 37 Bom. 116; *Girimallappa v. Kenchava* 45 Bom. 768, 784–5; *Ghasiti Umrao v. Umrao Jan* 20 I. A. 193.

1902. *Venku v. Mahalinga* 11 Mad. 393; *Kamalakshi v. Ramasami* 19 Mad. 127; *Duggirala Veeranna v. Duggirala Sarasiratnam* 71 M. L. J. 53; *Gangamma v. Cuddappah Kuppammal* I. L. R. (1938) Mad. 789.

1903. Vide Regulation XVII of 1829 and sec. 306 of I. P. C.

1904. Vide the Female Infanticide Prevention Act (VIII of 1870).

1905. Vide Act V of 1843 and sections 370 and 371 of I. P. C.

1906. The Child Marriage Restraint Act (XIX of 1929 as amended by Act XIX of 1938).

1907. Bombay Act X of 1934, sections 3–5.

1908. Vide *Vithal v. Anant* 11 Bom. H. C. R. 6; *Dinanath v. Sadashiva* 3 Bom. 9; *Raja v. Krishnabhat* 3 Bom. 232, *Waman v. Balaji* 14 Bom. 167.

a *yajaman* who had employed another priest to perform religious ceremonies the amount of the fees which would properly be payable to the vatandar joshi if he had been employed to perform such ceremonies and also the right to recover damages from a person who intrudes upon his office. But Bombay Act XI of 1926 (the Invalidation of Hindu Ceremonial Emoluments Act) now enacts (by sec. 4) that no person shall be entitled to claim as a matter of right any ceremonial emoluments from any Hindu who does not call in the services of the person claiming those emoluments. Therefore, suits of the nature described above cannot be brought now in Bombay by a *vatandar joshi.*

How customs and practices once prevalent may come to be discontinued or abrogated is well illustrated in the section on Kalivarjyas. Some of those that have a legal bearing have been already discussed above.

APPENDIX

NOTE 191

Long lists of high functionaries and other officers occur in several inscriptions. Vide E. I. vol. VII at p. 91 (Kahla plate of Soḍhadeva), E. I. vol. XII at p. 40, E. I. vol. XIV at p. 327 (grant of Mahīpāla). There are about 40 titles in some inscriptions. They are generally arranged in order of dignity and importance, the highest coming first. Sometimes several offices are held by the same man. For example, in the Jesar plate of Śīlāditya (dated in Valabhi year 357) the high officer Mammaka is styled 'sandhivigrahādhikṛta, divirapati, mahāpratīhāra, sāmanta' (E. I. XXII at p. 120). It is not claimed that the following is a thoroughly exhaustive list. It is, however, exhaustive enough. Titles and dignitaries in South Indian languages have been generally omitted. Vogel stands for Dr. Vogel's work on 'Antiquities of Chamba State' where, on pp. 120–136, he furnishes informing notes on some officers. There is difference of opinion among scholars about the exact meaning of certain office names. The individual functions of several officers are not quite clear. The references given here as to where an office occurs are not exhaustive. Chronologically older references alone are generally given and they are mostly taken (so far as inscriptions are concerned) from the Epigraphia Indica (E. I.) and the Indian Antiquary (I. A.). Many official titles have the word 'mahā' prefixed without any change in meaning in some cases. Vide India Office Plate of Lakṣmaṇasena in his 27th year (E. I. XXVI. p. 1 at p. 7) for many official titles beginning with 'mahā'.

अक्षपटलिक—Vide Mahākṣapaṭalika below. 'Akṣapaṭala' means 'Account office' (Stein) or 'Record office' (Fleet). There is 'grāmākṣapaṭalika' mentioned in the Harṣacarita (VII, para 2). Vide Chandela plate dated *saṁvat* 1108 (E. I. XX at p. 128) and Candrāvatī plate of Candradeva dated *saṁvat* 1148 (E. I. IX at p. 305). Kauṭilya has a section on the superintendent of 'akṣapaṭala' (II. 7).

अक्षपटलाधिकृत—This is synonymous with 'akṣapaṭalika'. This word occurs in Gupta Ins. No. 60 p. 257 and in Rājataraṅgiṇī V. 301, 397–398.

अक्षपटलाध्यक्ष —Superintendent of records and accounts. Vide Kauṭilya II. 7 and p. 143 above for his duties.

अक्षशालिक or अक्षशालिन्—Officer in charge of the gambling-hall. Vide Komanda plate of Nettabhañja in E. I. XXIV p. 172 at p. 173 (about 4th century A. D.).

अक्षावाप—Superintendent of gambling. He was one of the '*ratnins*' mentioned in the Tai. S. and Śat Br. Vide H. of Dh. vol. II. p. 1216 and above p. 112.

अट्टपति—'Market-master'. Vide Rājat. V. 167.

अधिकरणलेखक—Official recorder or scribe (who drew up deeds of sale and the like after having the land sold measured in his presence). Vide Rājat. VI. 38 and note 436 above where Viṣṇu Dh. S. VII. 3 is quoted.

अन्तपाल—Officer in charge of boundaries. Vide Kauṭilya I. 12 (one of the 18 *tīrthas*), II. 21, V. 1. and Kāmandaka XII. 5. The word occurs in the Mālavikāgnimtra, Act I.

अन्तःपुरमहामात्र—Officer in charge of the inner apartments or of the harem. Vide Masulipaṭam plate of Ammarāja II in E. I. XXIV p. 268 at p. 276.

अन्तःपुरिक—Officer in charge of the king's inner apartments or harem of the king. Vide Candrāvatī plate of Candradeva of Kanoj (in *saṁvat* 1148) in E. I. IX. at p. 305.

अन्तरङ्ग—A class of royal servants very intimate with the king (probably same as *ābhyantara*). Vide Parikud plate of Madhyamarājadeva of Śailadanta family in E. I. XI at p. 286 and grant of Lakṣmaṇasena in E. I. XII p. 91 (of 1122 A. D.).

अन्तर्वंशिक—Officer in charge of the inner apartments or harem. Kauṭilya I. 12 mentions this officer among the 18 *tīrthas*. The word occurs in the Kādambarī (para 88), the Daśakumāracarita III. p. 71 and is defined by the Amarakośa.

आभित्वरमाणक—A messenger. The word occurs in the Nālandā plate of Devapāladeva in E. I. XVII at p. 321 (the words are 'dūtapraiṣaṇika-gamāgamika-abhitvaramāṇaka') and in the Khalimpur plate of Dharmapāla (E. I. vol. IV p. 243 at p. 250). Vide also Chamba Ins. No. 15 p. 166 for the same and Vogel (pp. 125-126).

अमच—(Prākrit for अमात्य). Vide Nasik Ins. Nos. 4 and 5 in E. I. VIII pp. 71, 73).

अमात्य—Minister. Vide p. 104 and note 150 above.

अश्वघास-कायस्थ—A petty officer in charge of the fodder for horses. Vide Rājat. III. 489.

अश्वपति—A cavalry officer. Vide Gupta Ins. No. 61 at p. 259 (in the Gupta year 106).

आक्षपटलिक—Officer in charge of the account or record office. Vide E. I. vol. I pp. 316, 318 (grant of Karṇa I dated *saṁvat* 1148).

आग्रहारिक—Officer in charge of an *agrahāra* or *agrahāras*. Vide Gupta Ins. No. 12 (Bihar stone Ins. of Skandagupta) p. 47 at p. 52 and Mallasarul plate of Vijayasena in E. I. XXIII p. 155 at p. 159. The word may also be 'agrahārika' or 'agrahārin'. Vide E. I. XXIV at p. 127 for a note on 'agrahāra'.

आज्ञप्ति—One who communicates at the order of the king the details about a landgrant to local officers (probably the same as *dūtaka*). This word occurs in some of the earliest Ins. of Pallava Śivaskandavarman (in E. I. VI p. 84 at p. 88). Vide also E. I. VIII at p. 146 (plates of the great Pallava queen Cārudevī), JBBRAS vol. X p. 365 of *śake* 532 (where the ājñapti is Durgapatī), E. I. XII p. 3, E. I. XV p. 70 (plate of Sundara Cola). In the grant of the eastern Cālukya king Amma II we have 'ajñaptiḥ kaṭakādhīśo bhaṭṭadevaśca lekhakaḥ' (E. I. VII at p. 188). Vide p. 184 of the same for a discussion of the meaning.

आज्ञा—a synonym of आज्ञप्ति. Vide Parle plate of Indravarman in E. I. XIV p. 360 at p. 362 (of the Gaṅga year 149) where the words are 'ājñā mahāmahattara-Śivavarmā'. When in the Gupta Ins. No. 25 at p. 115 (of Mahārāja Saṅkṣobha) or in the plate of Droṇasiṁha in the Valabhi year 183 in E. I. XVI at p. 19 the words at the end are 'svayam-ājñā' the meaning is that the king employed no *dūtaka* to convey the details of his grant to the local officers but that he gave the details in person.

आज्ञादापक—Probably the same as 'ājñapti' or 'dūtaka'. Vide I. A. 14 p. 161 in the record of Vākpatirāja of Dhārā dated *saṁvat* 1036.

आटविक—Officer in charge of forest tracts. The word occurs in Kauṭilya I. 12 among the 18 *tīrthas*.

आधिकारिक—Officer. The exact function cannot be indicated. Vide grant of Dhārāvarṣa in *śake* 702 (E. I. XXIV p. 176

at p. 184), Cambay plates of Govinda IV in *śake* 852 (E. I. VII p. 26 at p. 40), Kauthem plate of Vikramāditya V in *śake* 930 (I. A. 16 p. 15 at p. 24).

आभ्यन्तर—Officers specially intimate or in close contact with the king. Vide Rājat. VIII. 426.

आयुक्त—An officer. The exact duties are not clear. Pāṇini II. 3. 40 indicates that he knows the word in the sense of a servant or officer. Vide Gupta Ins. No. 1 p. 1 at p. 8 (Allahabad Stone pillar Ins. of Samudragupta) which has 'āyukta-puruṣa'.

आयुक्तक—Same as आयुक्त. The word occurs in Kāmasūtra V. 5. 5 and Kāmandaka V. 82 (q. in note 73 above). Vide Omgudu grant of Vijayaskandavarman (E. I. XI at p. 250), Paharpur plate (E. I. XX p. 59 at p. 61 in Gupta year 159), plate of Droṇasiṁha in Valabhi year 183 (E. I. XI p. 17), grant of Dharasena II in Valabhi year 252 (in I. A. vol. 15 p. 187), the Maitraka plate in Gupta year 252 (E. I. XI p. 83).

आर्यपुत्र—(Prākrit अयपुत्र)—occurs in Brahmagiri Rock Inscription of Aśoka (in Corpus I. I. vol. I p. 175).

आशापाल—lit. guardian of quarters. Acc. to Śukra I. 192 he is a chief ruling over 10000 villages.

उपयुक्त—A subordinate officer. Kauṭilya II. 5 has that word. The duties cannot be specified.

उपयुक्तक—Probably the same as 'upayukta'. The word occurs in Karhad plates of Kṛṣṇa III dated *śake* 880 (E. I. IV p. 278, at p. 285), the Cambay plates of Govinda IV in *śake* 852 (in E. I. VII p. 26 at p. 40).

उपरिक—A very high officer, somewhat like a Governor of a province. Vide Damodarpur plate of Kumāragupta I in the Gupta year 125 (i. e. 443-44 A. D.) where an *uparika* is said to have been selected by Emperor Kumāragupta to govern Puṇḍravardhanabhukti and where the uparika is said to have appointed the kumārāmātya Vetravarman to govern the district (viṣaya) of Koṭivarṣa (E. I. XV p. 130). He is sometimes styled mahārāja and rājaputra. Vide also Gupta Inscriptions pp. 213, 216, the Bhagalpur plate of Nārāyaṇapāla (I. A. 15 p. 304 at p. 306), the Banskhera plate of Harṣa (E. I. IV p. 208 at p. 211) where *uparika* occurs after 'kumārāmātya' and before 'viṣayapati'. Viśvarūpa on Yāj. I. 307 quotes a prose passage from

Bṛhaspati where the qualities requisite in an *uparika* are set out. Vide Dr. R. G. Bhandarkar Festschrift pp. 231–233 for note and Vogel p. 123.

एकाङ्ग—The exact meaning is not certain; probably an officer belonging to a body organized in military fashion for collecting revenue or performing police duties. The word occurs in Rājat V. 249, VII. 1604.

कटकेश or कटकराज or कटकाधीश—Superintendent of the royal camp. Vide E. I. VII at p. 185 (grant of Amma II who ruled from 945 to 970 A. D.).

कट्टक—Exact function not known. The word occurs in two Taleśvara plates in E. I. XIII at p. 117. Vide महाकट्टक below.

कम्पनाधिपति or कम्पनापति or कम्पनेश—Commander-in-chief. Vide Rājat. V. 447, VII. 1362 and 1366.

कम्पनोद्ग्राहक—An officer connected with the army. Vide Rājat. VIII. 1430.

करण—A clerk. The word occurs in the Irda plate of Kamboja king Narapāladeva in E. I. XXII p. 150 at p. 155 (about 10th century A. D.).

करण-कायस्थ—A scribe of legal documents. Occurs in Chamba Ins. No. 25 p. 187 at p. 194. Vide Vogel p. 133.

करणिक—Officer in charge of a State department or office. The word occurs in the Nālandā stone Ins. of Yaśovarmadeva's reign about 530 A. D. in E. I. XX p. 37 at p. 44, in the Chatsu Ins. of Guhilot Bālāditya of about the 10th century in E. I. XII p. 10 at p. 17, in a grant dated *saṁvat* 1203 of Govindacandra's son in E. I. VIII p. 158 (where we have 'karaṇika-ṭhakkura-śrīvīvika), in E. I. XX Appendix p. 52 No. 350 of *saṁvat* 1228 (about the donation of a karaṇika-brāhmaṇa-Chāhaḍa).

करणिन्—Same as 'karaṇika'. The word occurs in the Harṣa-carita VII para 2 (*sakala-karaṇi-parikaraḥ*).

कर्मसचिव—Executive minister. The word occurs in Rudradāman's Junagadh Ins. of 150 A. D. in E. I. vol. VIII p. 36. Vide p. 105 above.

कायस्थ—A scribe or writer in the revenue department of the king. The oldest references are probably those in Yāj. I. 322, Viṣṇu Dh. S. VII. 3 and Bṛ. Saṁ. 86. 12. Vide Aśvaghaṣa-

kāyastha above and grāmakāyastha in Rājat. V. 175 and Indian Historical Quarterly, vol. IX p. 12 (a grant of Gupta year 120 i. e. 439-40 A. D.). Vide H. of Dh. vol. II. pp. 75-77 for a note on Kāyastha.

कार्मान्तिक—Superintendent of all mines and State manufactories. Kauṭilya I. 12 mentions him among the 18 *tīrthas.* Kauṭilya II. 12 is headed 'ākara-karmāntapravartanam' i. e. 'conducting mining operations and manufactories'.

कुमार—A prince younger than a Yuvarāja (the heir apparent). The word 'Kumāla' occurs in the first separate Rock Edict of Aśoka at Dhauli (Corpus I. I vol. I pp. 93, 97). Vide also Corpus I. I. vol. II pp. 40 and 48 (Mathurā Lion Pillar capital).

कुमारामात्य—A high officer below a provincial Governor. Vide 'uparika' above. In the Allahabad *praśasti* of Samudragupta, Hariṣeṇa is described as *kumārāmātya* and also *sāndhivigrahika* and *mahādaṇḍanāyaka* (Gupta Ins. No. 1 at p. 16). Vide Gupta Ins. No. 46 p. 213 at p. 216, the Banskhera plate of Harṣa (E. I. IV p. 208 at p. 211), E. I. X at p. 72 in the reign of Kumāragupta in Gupta year 117 (a brāhmaṇa is described as mantrin, kumārāmātya and mahābalādhikṛta). Vide Dr. U. N. Ghoshal's paper on 'kumārāmātya' in the proceedings of the 6th All India Oriental Conference pp. 211 ff., p. 117 above and Vogel p. 123.

कुलकरणि—a hereditary clerk or officer. The word occurs in the Sūdi Ins. of *śake* 981 in E. I. XV p. 85 at p. 91.

कुलिक—An officer in charge of ten villages who was granted a 'kula' of land for his salary. Vide Manu VII. 119 and Kullūka thereon. In the Damodarpur plate of Gupta year 124 it is said that the head of the district was assisted by the *nagara-śreṣṭhin. prathama-kulika* and *prathama-kāyastha* (E. I. XV at p. 130). In the Nālandā plate of Devapāladeva we read 'Oḍra-mālava-khaśa-kulika-karṇāṭa-hūṇa-cāṭa-bhaṭasevakādīn' (E. I. XVII at p. 321). Vide Chamba Ins. No. 15 at p. 166. Vogel says that 'Kulika' is a tribe (pp. 126-127). Probably the passage means 'officers in Orissa, Khaśa and Mālvā and the cāṭas and soldiers of Karṇāṭa and Hūṇa origin'. Kulika also means 'an arbitrator as a tribunal'. Vide pp. 280-282 above and Indian Historical Quarterly, vol. 19 p. 12 at p. 14. Vide महापाकुलिक.

कोट्टपाल—Officer in charge of a fort. The word occurs in the Bhagalpur plate of Nārāyaṇapāla (I. A. 15 p. 304 at p. 306) and in the Nālandā plate of Devapāladeva in E. I. XVII at p. 321 where the word is read as koṭapāla.

क्षत्तृ—Chamberlain. Vide p. 111 above. He is one of the '*ratnins*'. According to Manu X. 16 and Yāj. I. 94 the offspring of a kṣatriya woman from a śūdra male was called *kṣattṛ* and it is probable that such mixed offspring were employed as door-keepers or chamberlains.

क्षत्रप—A provincial chief. The word occurs in Corpus I. I. vol. II p. XXXIV and pp. 23, 28 (Taxila plate of Patika of the year 78) and in the plate of Vidagdha in 'Antiquities of Chamba', Ins. No. 15 p. 164 at p. 166. Vogel says it must be read as 'kṣetrapa'. Vide 'mahākṣatrapa' below. The word is probably a Sanskritized form of Persian 'satrap'.

क्षेत्रप—The word occurs in the Bhagalpur plate of Nārāyaṇapāla (I. A. 15 p. 304 at 306).

क्षेत्रपाल—Occurs in the Nālandā plate of Devapāladeva (E. I. XVII at p. 321).

खण्डरक्ष—The word occurs in the Bhagalpur plate of Nārāyaṇapāla (I. A. 15 p. 304 at p. 306), in the Nālandā plate of Devapāladeva (E. I. XVII at p. 321) and in the Chamba Inscription Nos. 15 and 26. In 'Antiquities of Chamba' Ins. No. 25 the form is 'khaḍgarakṣa'. Vide Vogel pp. 127-128.

खण्डपाल—Occurs in the Kahla plate of Soḍhadeva of *saṁvat* 1134 (E. I. VII p. 85 at p. 91). The form खण्डपाल occurs in the Panchobh plate of संग्रामगुप्त (JBORS. vol. V p. 582 at p. 588).

खोल—Occurs in the Khalimpur plate of Dharmapāladeva (E. I. vol. IV p. 243 at p. 250). The meaning is uncertain.

गजपति—Officer in charge of the elephant arm in an army. The word occurs in the plate of Jayacandra of Kanoj dated *saṁvat* 1225 in I. A. vol. 15 at p. 7.

गञ्जपति—Occurs in the Taleśvara plate (6th to 8th centuries A. D.) in E. I. XIII. p. 109 at 115. उत्पल on बृहत्संहिता 52. 13 says 'कोशभवनं गञ्जः'.

गञ्जवर—(a Persian word for 'treasurer')—occurs in the Ins. of Mahākṣatrapa Śoḍāsa found at Mathurā (in E. I. IX p. 247). Vide Rājat. V. 177.

गमागमिक—The meaning is uncertain. It probably means some kind of messenger. It occurs in Bhagalpur plate of Nārāyaṇapāla (I. A. 15 p. 304 at p. 306), the Nālandā plate of Devapāladeva (E. I. XVII at p. 321), the Rajor Ins. of Mathanadeva in *saṁvat* 1016 (in E. I. vol. III p. 263 at p. 266). उत्पल on बृहत्संहिता 85. 34 explains दूत as गमागमिक. In the Khalimpur plate (E. I. vol. IV pp. 243, 250) the words दूतखोलगमागमिकाभित्वरमाण occur one after another.

गावुण्ड—Same as *grāmakūṭa* below. Vide Ins. from Hottur in E. I. XVI p. 74 (of śake 929).

गावुण्डु—Same as above. It occurs in the Raṭṭa Ins. from Saundatti of śake 902 (in JBBRAS. vol. X at p. 208).

गुल्मपाते—Officer in charge of a गुल्म, for which see p. 205 above. It occurs in the Panchobh plate of Saṅgrāmagupta (12th century) in JBORS. vol. V p. 582 at p. 588.

गूढपुरुष—Secret service men. Vide Irda plate of Kamboja king Narapāladeva in E. I. XXII p. 150 at p. 156 (about 10th century).

गोप—Officer over five or ten villages. Vide Kauṭ. II. 35 and p. 143 above.

गौल्मिक—'Superintendent of woods and forests' (Fleet). The word occurs in Gupta Ins. No. 12 p. 47 at p. 50, in the Nālandā plate of Devapāla (E. I. XVII at p. 321), Bhagalpur plate of Nārāyaṇapāla (I. A. 15 p. 304 at p. 306), in the grant of Lakṣmaṇasena (E. I. XII p. 6 at p. 9). The word is formed from 'gulma' acc. to Vārtika 13 (āyasthānebhyaṣṭhaka) on Pāṇini IV. 2. 104. Vogel (p. 127) boldly asserts that 'the words śaulkika and gaulmika are unknown in Sanskrit Literature' in spite of Bühler's note in E. I. vol. I p. 2 at p. 7 that śaulkikas are frequently mentioned in inscriptions. But śaulkika also occurs in Yāj. II. 173 and both words occur in the Mahābhāṣya. Gulma means a post of guards. Vide p. 141 above. The word 'gumike' read in the grant of Pallava Śivaskandavarman (E. I. vol. I p. 2 at p. 5) is correctly held by Bühler to stand for 'gaulmika'.

ग्रामकायस्थ—Village scribe. Occurs in Rājat. V. 175.

ग्रामकूट—Village headman. Vide p. 154 for reference from Paithīnasi. Kauṭ. IV. 4 has that word and the com. on Kāmasūtra V. 5. 5 explains 'halotthavṛtti' as 'grāmakūṭa'. Vide also Karhad plates of Kṛṣṇa III dated śake 880 (E. I.

IV p. 278 at p. 285), the Sanjan plates of Buddha-varasa (E. I. XIV p. 144 at p. 150), the grant of Karka Suvarṇavarṣa in śake 746 (E. I. XXIV p. 77 at p. 84), Cambay plates of Govinda IV in śake 852 (E. I. VII pp. 26, 39).

ग्रामकूटक—Same as above. This form occurs in Kauṭheṁ plate of Vikramāditya V dated śake 930 (I. A. vol. 16 p. 15 at p. 24).

ग्रामणी—Village headman. Vide pp. 153–154 above for ancient references. Pāṇini V. 2. 78 has this word.

ग्रामनेतृ—Same as above. Occurs in Śukra II. 120.

ग्रामपति—Occurs in the Mit. on Yāj. II. 271.

ग्रामभर्तृ—Occurs in Yāj. II. 271.

ग्रामाधिपति—Vide Kāmasūtra V. 5. 5.

ग्रामिक—Village headman. Occurs in Manu VII. 116, Kauṭ. III. 10 and in Bhūmara stone Pillar Ins. of Hastin and Śarvanātha in Gupta year 189 (Gupta Inscription No. 24 p. 112).

घट्टपति—Officer in charge of quays or landing places (*ghats*). Occurs in Kahla plate of Soḍhadeva in *saṁvat* 1134 (E. I. VII. p. 85 at p. 91). For घट्टपाल vide JBORS vol. V pp. 582, 588.

चाट—This word has given rise to various opinions. Fleet and Bühler translate as 'irregular soldiers'. Vogel (pp. 130–132) points out that Chamba is the only place where the ancient word 'cāṭa' is still extant in the modern form 'chaṭ' meaning 'head of a *pargaṇa*'. Grants of villages are often expressed as 'acāṭabhaṭapraveśya' (not to be entered by cāṭas and bhaṭas)'. For example, in the Surat plate of Maitraka Vyāghrasena (E. I. XI at p. 221) it is stated that the granted land was not to be entered by cāṭas and bhaṭas except for (seizing) robbers and those guilty of harm or treason to the king. Similar words occur in the Betul plates of Saṅkṣobha in Gupta year 199 (acāṭabhaṭapraveśyam coradrohakavarjam) in E. I. VIII p. 287. The words occur also in the Khoh plate of Mahārāja Hastin in Gupta year 191 (Gupta Ins. No. 23 p. 106). Yāj. I. 336 states that it is the duty of the king to protect people from the harassment caused by *cāṭas*, robbers and *kāyasthas* and the Mit. explains 'cāṭa' as persons who deprive people of their wealth after producing false confidence in them. Three quarters of the same verse occur in the Pañcatantra I p. 72 verse 343. Aparārka (p. 792) quotes Bṛhaspati that 'dangers common to all are those arising from cāṭas and thieves'.

Prof. Pathak while editing the Abhona plates of Śaṅkaragaṇa dated in Kalacuri *saṁvat* 347 in E. I. IX p. 296 quotes the words of Śaṅkarācārya (tārkika-cāṭa-bhaṭarājāpraveśyam) in his Bhāṣya on Bṛ. Up. and Ānandagiri's explanation thereon viz. *cāṭas* are those that transgress the rules of conduct for decent people and bhaṭas are servants telling falsehoods. Vide the Valabhi grant of Dharasena II in 252 Gupta year (I. A. 15 p. 187) and the Palitana plates of the same king and of the same year in E. I. XI. p. 80 at p. 83 and the Banskhera plate of Harṣa (E. I. IV p. 208, at p. 211 where we read ' bhaṭacāṭa-sevakādīn) for other early occurrences of the word. In the Naihati grant of Ballālasena we have the words ' caṭṭabhaṭṭa-jātīyān janapadān ' (E. I. XIV p. 156 at p. 160).

चोरग्राह—Thief-catcher. The word occurs in Nārada (pariśiṣṭa verse 18) and in Kāt. q. by Aparārka p. 844.

चोररज्जुक—Probably an officer whose duty it was to secure robbers with ropes. Kauṭ. IV. 13 mentions this officer and II. 6 refers to ' corarajjū ' as one constituent of ' rāṣṭra '.

चौरोद्धरणिक—Thief-catcher or one who exterminates thieves. This word occurs in Gupta Ins. No. 46 p. 213 at p. 216, the Valabhi grant of Dharasena II in Gupta year 252 (I. A. 15 p. 187) and the Palitana plate of the same king in the same year (E. I. XI p. 80 at p. 83), the Rāṣṭrakūṭa grant of śake 697 (JBBRAS vol. 16 p. 105 at p. 108), Bhagalpur plate of Nārāyaṇapāla (I. A. 15 p. 304 at p. 306), the grant of Lakṣmaṇasena (E. I. XI p. 6 at p. 9).

चौरोद्धर्तृ—Same as above. The word occurs in Yāj. II. 271 and in Kātyāyana quoted by Aparārka p. 844.

छत्रछायिक—Umbrella bearer. This word occurs in ' Antiquities of Chamba ', Ins. No. 15 at p. 166. Vide Vogel p. 128.

ठक्कुर—It appears to have been a mere title and not an office whereby the holder was entitled to wield some kind of power in the State. The word occurs in saṁvat 1005 (E. I. XIX p. 243), in the plate of Govindacandra in saṁvat 1186 (in E. I. XIII p. 295 at p. 297), the Sevadi plate of Cāhamāna Ratnapāla in saṁvat 1176 (E. I. XI p. 304 at p. 310). It occurs as a title in Rājat. VII. 290, 706, 738.

तन्त्रपति—A Judge (dharmādhikārin). Occurs in Rājat. VIII. 2422.

तन्त्रपाल—Seems to mean some officer like "Charged' affaires". The word occurs in a record at Sūdi in Ron Taluka of Cālukya Someśvara I in śake 973 (E. I. V at p. 77) and in Partabgarh Ins. of Pratihāra king Mahendrapāla in *saṁvat* 1003 (in E. I. XIV p. 176 at p. 185), one Mādhava being styled 'tantrapāla-mahāsāmanta-mahādaṇḍanāyaka'.

तरपति—Superintendent of all ferries. Vide Nālandā plate of Devapāla (E. I. XVII at p. 321) and Kahla plate of Soḍhadeva in *saṁvat* 1134 (E. I. VII at p. 91). In the Nālandā plate 'tarika' and 'tarapatika' come immediately after one another and must be distinguished as to meaning.

तरिक—Probably means 'one who plies a ferry boat'. Occurs in Nālandā plate of Devapāla (E. I. XVII at p. 321), Bhagalpur plate of Nārāyaṇapāla (I. A. 15 p. 304 at p. 306).

तलार or तलारक्ष—Meaning uncertain. The word occurs in the Ins. of Samarasiṁha of Mewar in saṁvat 1330 (E. I. vol. XX, Appendix No. 579 p. 82). In Punjab a subdivision of high class *khatris* is called Tālwār.

तलावाटक—Meaning not apparent. Bhagavanlal suggested that it is the same as modern 'Talāṭi' (petty revenue officer). It occurs in the Deo-Baranark Ins. of Jīvitagupta (Gupta Ins. No. 46 p. 213 at p. 216).

दण्डनाथ—Commander of an army. In E. I. vol. V. p. 28 at p. 31 mention is made of a Daṇḍanātha Sahadeva under the Yādava king Jaitugi or Jaitapāla (about 1200 A. D.).

दण्डनायक—Various meanings are assigned by several scholars. Stein on Rājat. VII. 951 takes it to mean 'prefect of police'. In many cases it appears to mean a 'General or Magistrate'. In E. I. VII, Appendix No. 291, 292 and 296 Ins. of the years 1178 to 1181 A. D. there is one Keśimayya styled 'daṇḍanāyaka' lower in rank than mahāmaṇḍaleśvara. Vide also Ins. of Jayakeśi Kadamba of 1125 A. D. in E. I. XIII p. 298 and p. 317 (Daṇḍanāyaka Lakkharasa), JBBRAS XII p. 11 in śake 1145 (Daṇḍanāyaka Puruṣottama of Yādava Siṅghaṇa), the Abhir Ins. in E. I. V p. 234 where one Mahādevarasa is styled mahāsāmantādhipati and daṇḍanāyaka and his subordinate Māyideva is also called 'daṇḍanāyaka' (about 1153 A. D.), in several Kalacurya Inscriptions (E. I. V p. 24 at p. 28, E. I. V. p. 213 at p. 215). Lakaṇṇa and Mādaṇṇa were daṇḍanāyakas of Devarāya II of Vijayanagara (about 1388 śake) in E. I. XV at p. 15. Vide p. 115 and n. 152 above. E. I. XIX p. 265 at p. 269 (grant of

Dharmarāja) reads 'dāṇḍanāyaka'. In Bṛ. Saṁ. 72. 4 the queen, yuvarāja, senāpati and daṇḍanāyaka are placed on the same level in the matter of the staff (daṇḍa) to be prepared for them.

दण्डपति—Commander of forces or a governor. Vide Abu Vimala temple Ins. dated *saṁvat* 1378 in E. I. IX pp. 148, 156.

दण्डपाल—An officer in charge of all branches of the army. Vide Kauṭ. I. 12 and p. 112 n. 147 above.

दण्डपाशिक—Officer in charge of punishment i. e. criminal justice. The word occurs in the Palitana plates of Dharasena II dated in Gupta year 252 (E. I. XI p. 83), in the Valabhi grant of the same king in the same year (I. A. 15 p. 187), in the Bhagalpur plate of Nārāyaṇapāla (I. A. 15 p. 304 at p. 306 which reads 'dāṇḍapāśika') and Lakṣmaṇasena's grant (E. I. XII at p. 9), also in Yaśastilaka I. p. 50.

दण्डवासिक—(a prākrit form of daṇḍapāśika). Occurs in Chamba Ins. No. 15 at p. 166. Vide Vogel p. 129.

दण्डशक्ति—Meaning uncertain. The word occurs in Khalimpur plate of Dharmapāla in E. I. vol. IV p. 243 at p. 250.

दण्डाधिनाथ—Same as daṇḍapāla. The word occurs in the Chittur plates of Kullottuṅga Coḍadeva (I. A. 14 p. 55 in *śake* 1056).

दण्डाधिप—Same as above. The word occurs in a quotation in the com. on Yaśastilaka I. p. 91 and the Abu Vimala temple Ins. dated saṁvat 1378 in E. I. IX p. 148 at p. 151. Vide note 148 above for quotation.

दण्डिक—Same as 'daṇḍavāsika'. Vide Chamba Ins. No. 15 at p. 166.

दण्डेश—Same as दण्डनाथ. In J. B. B. R. A. S. vol. 15 p. 386 (of śake 1160) there is a commander (daṇḍeśa) Bicirāya under Yādava king Siṅghaṇa.

दाण्डपाशिक—Same as 'daṇḍapāśika'. This word occurs in the Pañcatantra II, *Kathā* 4 (as daṇḍapāśaka meaning a watchman), in the grant of Mahābhavagupta I (E. I. XI at p. 94), in the Nālandā plate of Devapāla (E. I. XVII at p. 321), in E. I. XIX p. 265 at p. 269. Vide Vogel p. 129.

दाण्डमौलिक—Probably the same as दाण्डपाशिक. The word occurs in the Wala plate of Guhasena in Valabhi year 246 (E. I. XIII at p. 339).

दाण्डिक—A police officer. The word occurs in the Gupta Ins. No. 46 p. 213 at p. 216, in the Bhagalpur plate of Nārāyaṇapāla (I. A. 15 p. 304 at p. 306), in the Nālandā plate of Devapāla

(E. I. XVII at p. 321). In this last 'dāṇḍika' and 'dāṇḍapāśika' come immediately after one another.

दापक—Appears to be the same as 'dūtaka'. The word occurs in the grant of Paramāra king Sīyakadeva dated *saṁvat* 1026 (in E. I. XIX p. 177) and in E. I. XIX at p. 243 (dated *saṁvat* 1005).

दाशापराधिक—meaning doubtful. Probably an officer whose concern was with the ten *aparādhas* of which the king could take cognisance *suo motu*. The word occurs in the Nālandā plate of Devapāla (E. I. XVII at p. 321) and in the Bhagalpur plate of Nārāyaṇapāla (I. A. 15 p. 304 at p. 306). Vide p. 264 above for the ten *aparādhas*.

दिक्पाल—Probably officers in charge of the borders of a kingdom. The word occurs in Nārada (Dr. Jolly's edition, pariśiṣṭa verse 17) q. by the Mit. on Yāj. II 271 and Kāt. (813) q. by Aparārka p. 844.

दिविर—a clerk. The Rājat. VIII. 131 makes it clear that 'divira' was distinct from the 'kāyastha'. The word occurs in the Gupta Ins. No. 27 at p. 122 of Mahārāja Jayanātha in Gupta year 177 (where one of the donees is a *divira* Sarvavādha).

दिवीरपति (or दिविरपति)—chief of clerks. In the grant of Śīlāditya of the Gupta year 286 a certain officer is styled 'sāndhivigrahādhikṛta-divirapati' (E. I. XI p. 174 at p. 180); vide also Jesar plate of Śīlāditya in 357 Valabhi year (E. I. XXII p. 114 at p. 117) where a person called Mammaka is styled 'divirapati' and also *sandhivigrahika-mahāpratihāra* and *sāmanta* '.

दुःसाधसाधनिक—Vide दौःसाधसाधनिक below.

दुर्गपाल—Superintendent of a fort. Vide p. 112 note 147 above.

दुष्टसाधक—meaning uncertain. The word occurs in the Kahla plate of Soḍhadeva of *saṁvat* 1134 (E. I. VII at p. 91).

दूत—Messenger, envoy. Vide Viṣṇudharmottara II. 24. 13-14, 28 for his qualifications and pp. 112, 127 above. In the 13th Rock Edit of Aśoka at Shahabazgadhi we have 'duta' (vide Corpus I. I. vol. I p. 67).

दूतक—A high officer or delegate who conveys the king's command about the grant of land to local officers. The word occurs in the Betul plate of Saṅkṣobha in 199 Gupta year (Gupta Ins. pp. 286-289), and in the plate of Mahārāja Jayanātha of Gupta year 174 (Gupta Ins. No. 26 p. 117 at

p. 119 where the 'dūtaka' is Uparikadikṣita Sarvadatta), in the Banskhera plate of Harṣa in E. I. IV p. 208 (dūtakotra mahāpramātāra-mahāsāmanta-śrī-Skandagupta) and also in the Madhuban plate of Harṣa (E. I. VII at p. 158). In the Daulatpur plate of Bhojadeva I in Harṣa *saṁvat* 100 the dūtaka is said to be 'Yuvarāja-Nāgabhaṭa'.' Vide also E. I. VI p. 285, E. I. VIII. 287, XI p. 80. In the Khalimpur plate of Dharmapāla (in E. I. vol. IV p. 243 at p. 250) the king states that he was requested to make a grant by Mahāsāmantādhipati Nārāyaṇavarman through the Prince Tribhuvanpāla as dūtaka.

दूतप्रैषणिक—Meaning doubtful. The word occurs in the Nālandā plate of Devapāla (E. I. XVII at p. 321) and the Bhagalpur plate of Nārāyaṇapāla (I. A. 15 p. 304 at p. 306).

देशाधिकृत—(Prākit 'desadhikata')—Governor of a Province. The Prakrit form occurs in the Ins. of Pallava Śivaskandavarman in the year 8 (E. I. vol. I. at p. 5).

दौःसाधसाधनिक—Meaning doubtful. Probably means 'those who catch dangerous robbers whom it is difficult to secure'. The word occurs in the Banskhera plate of Harṣa (E. I. IV p. 208 at p. 211). The form 'duḥsādha-sādhanika' occurs in the Sevadi plates of Cāhamāna Ratnapāla in saṁvat 1176 (E. I. XI at p. 310). Vide also E. I. XXVI at p. 206 and 'mahāsādhanika' below.

दौःसाधिक—Probably the same as above. The word occurs in the grant of Lakṣmaṇasena in the 3rd year of his reign (i. e. 1122 A. D.) in E. I. XII at p. 9.

दौवारिक—Doorkeeper. Vide Kauṭilya I. 12, Lalitavistara p. 136, Viṣṇudharmottara II. 24. 30.

द्राङ्गिक—Officer in charge of a city station or watch tower for collecting customs duties. 'Draṅga' means either 'a town' (as in E. I. XX, No. 810 of śake 1509) or 'a watch station' (as in Rājat. VIII. 2010). The word occurs in Valabhī plate of Dharasena II in Valabhī saṁvat 252 (I. A. 15 p. 187), Gupta Ins. No. 38 at p. 169, Palitana plate of Siṁhāditya in 255 Valabhī year (E. I. XI p. 16 at p. 18), Bhavanagar plate of Dhruvasena I in Valabhī year 210 (E. I. XV p. 257), Wala plate of Guhasena (E. I. XIII at p. 339), the Navalakhi plate of Śilāditya (E. I. XI at p. 179).

द्राङ्गेश—Guardian of frontiers. Vide Stein's translation of Rājat. vol. II pp. 291-292 for the meaning of 'draṅga'.

द्वारनाथ, द्वारपति, द्वाराधिप—Superintendent of passes leading into the kingdom (Stein). Vide Rājat. V. 214.

धर्ममहामात्र—Superintendent of morality. Vide Aśoka's Edicts in Corpus I. I. vol. I p. 96 (first Rock edict at Girnar).

धर्माधिकरण—Judge. Vide Viṣṇudharmottara II. 24. 24–25.

धर्माधिकरणिन्—Judge. Vide Matsyapurāṇa 215. 24 and note 167 above.

धर्माध्यक्ष—Vide p. 126 above.

ध्रुव—Collector of the royal share of grain. The word occurs in the Bhinmal Ins. of *saṁvat* 1320 (Bombay Gazetteer, vol. I part 1 p. 477).

ध्रुवाधिकरणिक—Probably the same as above. The word occurs in Gupta Ins. No. 38 pp. 164–166 (Māliya plate of Dharasena II in Gupta year 252), the Wala plate of Guhasena (E. I. VII at p. 339 of Valabhi year 246).

नगरपति—City Prefect. The word occurs in the Śilāra grant of *śake* 1016 (I. A. vol. 9 p. 33 at p. 35).

नगरव्यावहारिक—City Magistrate. Vide Kauṭilya I. 12 for Paura-vyāvahārika and note 147 on p. 112 above. The word 'Nagalaviyohālaka' occurs in the First separate Rock Edict of Aśoka at Dhauli (Corpus I. I. vol. I. p. 92).

नगरश्रेष्ठिन्—City Banker or guild president of the town. The word occurs in the Damodarpur plate No. 4 of the time of Budha-gupta (E. I. XV at p. 115) and in the Paharpur plate (E. I. XX at p. 63).

नगराधिकृत or नगराधिप—City prefect. Occurs in Rājat. IV. 81, VI. 70, VIII. 3334.

नरपति—Exact function doubtful. The word occurs in the plate of Jayacandra of Kanoj in *saṁvat* 1225 (I. A. vol. 15 p. 6 at p. 7) and in the Panchobh plate of Saṅgrāmagupta in JBORS. vol. V p. 582 at p. 588.

नागरक—Chief Officer of the city. The word occurs in Kauṭilya II. 36, Kāmasūtra V. 5. 9 (the com. on which explains *nāgaraka* as *daṇḍapāśika*). Vide p. 149 above for his functions.

नागरिक—Chief of the police. The word occurs in the Vikramor-vaśīya V (after verse 4), the Daśakumāracarita II. pp. 58 and 59. The Vaijayantī explains the word as 'kārāpati, (Jail Superintendent).

नायक—Head of (ten) villages. The word occurs in Kauṭilya I. 12, Śukra I. 192.

नियुक्तक—An officer, whose exact function is not known. The word occurs in the grant of Karka dated *śake* 746 (E. I. XXIV p. 77 at p. 84), in the Kauṭhem plate of Vikramāditya V dated *śake* 930 (I. A. vol. 16 p. 15 at p. 24), in the Rajor Ins. of Mathanadeva dated *saṁvat* 1016 (E. I. III p. 263 at p. 266).

निहेलपति—Governor of some part of a kingdom. In Chamba Ins. No. 15 p. 164 at p. 166 we read in Vidagdha's plate 'Viṣaya-pati-nihelapati-kṣatrapa'. Vide Vogel p. 124. In Gupta Ins. No. 80 p. 286 at p. 289 the 'dūta' of the grant is 'nihila-pati' Kuśala-prakāśa. So 'nihila' and 'nihela' probably mean the same thing.

नैमित्तिक—Probably 'soothsayer or astrologer'. The word occurs in the plate of Candradeva of Kanoj of *saṁvat* 1148 (E. I. IX p. 302 at p. 305).

पञ्चकुल—An officer over a certain number of villages. The word occurs in the grant of Arjunadeva of Anahillapāṭaka in Vikrama year 1320 (I. A. vol. 11 at p. 242, where we read 'Śrī-Abhayasiṁhaprabhṛti-pañcakulapratipattau'), in the Bhinmal Ins. No. 12 dated *saṁvat* 1333 (Bombay Gazetteer vol. I part I p. 480) where we read 'tan-niyukta-mahā-Gajasiṁha-prabhṛti-pañcakula-pratipattau'). In E. I. XXIV at p. 89 (in an Ins. from Udaipur) we have a Pañcolī of the Gughāvata family. Here, it appears that 'pañcakula' was a board of officers of whom Gajasiṁha was one (or the chief). Vide महापञ्चकुलिक below.

पञ्चमण्डली—A board of five officers or a *panchayat*. The word occurs in the Sanchi Stone Ins. of Candragupta II in Gupta year 93 (vide Gupta Ins. No. 5 at p. 31).

पट्टकिल—Village headman. The word occurs in the Malva plates of Vākpatirāja in *saṁvat* 1031 and 1078 (I. A. vol. 6 at pp. 51 and 53), in the Māndhātā plate of Jayasiṁha of Dhārā in *saṁvat* 1112 (E. I. vol. III p. 46 at p. 48), in the plate of the Paramāra king Udayavarman of *saṁvat* 1256 (I. A. vol. 16 p. 252 at p. 254). Vide p. 154 above for other references.

पट्टोपाध्याय—Recorder of official documents. Vide Rājat. V. 397.

पण्डित—Vide note 150 above.

पिशुनवेत्रिक—probably means 'an officer who drives away undesirable persons with a cane'. The word occurs in the plate of Mahābhavagupta I (E. I. XI p. 93 at p. 94).

पीठिकावित्त—Meaning uncertain. The word occurs in the Belava plate of Bhojavarmadeva (E. I. XII p. 37 at p. 40).

पुरुष—means 'inferior servant' (as in Kauṭilya II. 5) or a bailiff attached to a Court of justice (as in Bṛ.). Vide p. 278 above.

पुरोहित—Vide pp. 111–112 and 117 above. The purohita occurs in the list of functionaries in the Candrāvatī plate of Candradeva of Kanoj in *saṁvat* 1148 (E. I. IX at p. 305) and in the grant of Lakṣmaṇasena (E. I. XII p. 6 at p. 9).

पुस्तपाल—Keeper of land records. The word occurs in the Damodarpur plates dated Gupta year 124 and 129 (E. I. XV p. 113, at p. 130) and in the Paharpur plates (E. I. vol. XX. p. 61).

पारव्यावहारिक—Vide p. 112 note 147 above. Compare 'nagalaviyohālaka' above under 'nagara-vyāvahārika'.

प्रतिनर्तक—Herald. This word occurs in Gupta Ins. No. 39 p. 171 at p. 190 dated 766–67 A. D. (The words are 'tan-niyukta-pratinartaka-kulaputrāmātya-Guhena').

प्रतिनिधि—Vide note 150 above.

प्रतिहार—Chamberlain or 'inditer of grants'. In Nasik Ins. No. 5 the word *patihāra* (pratihāra) occurs (E. I. VIII p. 73). Bṛhaspati quoted by Viśvarūpa on Yāj. I. 307 states the qualifications of a 'pratihāra'. Vide Ādiparva 85, 28–29, Viṣṇudharmottara II. 24. 12, Śukra I. 121 for definitions. In the grant of Dhruvasena dated Valabhi year 206 the *dūtaka* of the grant is *pratihāra* Mammaka.

प्रतीहार—Same as above. The form occurs in the Vasantagaḍh Ins. of Varmalāta (E. I. IX. p. 187 at p. 192), in the Candrāvatī plate of Candradeva of Kanoj in *saṁvat* 1148 (E. I. IX at p. 305); in E. I. IX p. 117 at p. 119 Paramāra king Jayavarma II causes *pratihāra* Gaṅgadeva to give a village to three brāhmaṇas (in *saṁvat* 1317).

प्रथमकायस्थ—Chief scribe. The word occurs in the Damodarpur plate 1 of Kumāragupta in Gupta year 124 (E. I. XV at p. 130).

प्रदेष्टृ—Police Magistrate. Vide Kauṭilya I. 12, IV. 1, IV. 10 (last verse). The word occurs in the Irda plate of the

Kamboja king Nayapāladeva (of about the 10th century) in E. I. XXII. pp. 150 at p. 156.

प्रधान—Vide note 150 above. The word occurs in the Śilāra plate of Mahāmaṇḍaleśvara Anantadeva (I. A. 9 p. 33 at p. 35 where 'mantrin', 'amātya' and 'pradhāna' are mentioned).

प्रमातार—Vogel (pp. 122–123) holds that this officer was concerned with the administration of justice. The word occurs in the Banskhera plate of Harṣa (E. I. IV p. 208 at p. 211).

प्रमातृ—Probably 'civil judge'. The word occurs in the Nālandā plate of Devapāla (E. I. XVII at p. 321) and in the grant of Dhruvasena III in the Gupta year 334 (E. I. vol. 1 p. 85 at p. 88). Vide also E. I. vol. I at p. 115.

प्रवेशभागिक—Meaning doubtful. Stein conjectures that he is a subordinate officer of the treasury who received cash payments. The word occurs in Rājat. VIII. 278.

प्रशास्तृ—Probably chief magistrate. The word occurs in Kauṭ. I. 12; vide p. 112 *n.* 147 above.

प्राणाचार्य—Medical adviser to the king. Vide Viṣṇudharmottara II. 24. 33–34 for his qualifications.

प्राड्विवाक—Chief Justice. Vide Manu IX. 234 and p. 272 above.

प्रातिसारक—Meaning doubtful. The word occurs in the Valabhi grant of Dharasena II dated Gupta year 252 (I. A. 15 p. 187).

प्रादेशिक–(प्रादेसिक)—An officer under Aśoka, probably the same as the mahāmātra. The word occurs in the 3rd Rock Edict of Aśoka at Girnar (Corpus I. I. vol. I. pp. 4–5).

प्रान्तपाल—Governor of a Province or guardian of the frontiers. The word occurs in the Bhagalpur plate of Nārāyaṇapāla (I. A. vol. 15 p. 304, at p. 306) and in 'Antiquities of Chamba' Ins. No. 15 at p. 166. Vide Vogel p. 124.

प्रायोपवेशाधिकृत—Officer who watched those that had resolved to fast unto death. Vide Rājat. VI. 14.

बलाधिकृत—Commander of an army. The word occurs in the Kādambarī (para 74) of Bāṇa (where Balāhaka is so called) and in the Rāṣṭrakūṭa (Gujerat branch) grant of *śake* 679 (J. B. B. R. A. S. vol. 16 p. 105 at p. 108 where 'balādhikṛta' follows 'senāpati').

बाह्य—A class of royal servants (as distinguished from 'antaranga'. Vide Rājat. VIII. 426, 680, 1542.

बृहदुपरिक—Great Governor of a province. The word occurs in the grant of Lakṣmaṇasena (E. I. XII p. 6 at p. 9). See 'uparika' above.

भट—The word occurs very frequently in conjunction with 'cāṭa' for which see above. Vide also Dudia plates of Pravarasena II in E. I. III p. 258 at p. 261 and Banskhera plate of Harṣa (E. I. IV p. 208 at p. 211), grant of Śivaskandavarman (E. I. vol. I. p. 2 at p. 5) where 'bhada' stands for 'bhaṭa'.

भागदुघ—Vide p. 112 above.

भागहार—He who recovers the king's share of the produce of land; one of the six officers of each village, acc. to Śukra II. 120.

भागिक—Meaning uncertain. The word has something to do with 'bhāga' and 'bhoga' which frequently occur in the Gupta Inscriptions (e. g. 'bhogabhāgam' in Gupta Ins. No. 40 at p. 194 and No. 41 at p. 198). Vide two Taleśvara plates (E. I. XIII, p. 109 at p. 115) and 'Antiquities of Chamba' (Ins. No. 15 p. 166) where both 'bhāgika' and 'bhogika' are found. Mr. Y. R. Gupte renders it as 'owner of land'. Vide Vogel p. 130.

भाण्डागारप्रथम—The chief of the royal store-house or treasury. The word occurs in the Ambarnath Ins. of Maṁvāṇi in śake 782 (J B B R A S. vol. 9 p. 219).

भाण्डागारिक—A storekeeper or keeper of royal treasury. The word occurs as 'bhaṇḍākarikaya' ('bhāṇḍāgārikasya', of a store-keeper) in Nasik Ins. No. 19 (E. I. VIII p. 91) and in the Candrāvati plate of Candradeva of Kanoj dated *saṁvat* 1148 (E. I. IX p. 302 at p. 305).

भिषक्—King's medical adviser. Vide E. I. IX p. 302 at p. 305.

भोगपति—Head of a district. It occurs in the Mitākṣarā on Yāj. I. 320, in E. I. IX p. 296 at p. 298 plates of Śaṅkarkagaṇa where we read 'anyairvāgāminṛpati-bhogapatibhiḥ', as contrasted with a king and in 'Antiquities of Chamba' Ins. No. 45 at p. 166.

भोगिक—Head of a district or Collector of the State share of land produce taken in kind (Bombay Gazetteer I part 1 p. 82). The word occurs in Gupta Ins. No. 21 p. 93 at p. 96 and No. 22 p. 100 at p. 104 (of the Gupta year 163), No. 23 p. 106 at p. 108 (of the Gupta year 191), in the Kavi grant of

Jayabhaṭa about the beginning of 5th century A. D. (I. A. vol. V at p. 114), in the Taleśvara plates (E. I. XIII p. 109 at p. 117).

भोगोद्धरणिक—The same as 'bhogika' above.

भोजक—A village headman or 'freeholder' (Bühler). The word occurs in the Deo Baranark Ins. of Jīvitagupta II (Gupta Ins. No. 46 p. 213 at p. 216) and in the grant of Pallava Śivaskandavarman (E. I. vol. I. p. 2 at p. 5).

मण्डलेश—' Lord of a maṇḍala ', a provincial governor. Vide Rājat. VI. 73, VII. 996, VIII. 1228, 1814, 2029.

मण्डलेश्वर—Same meaning as above. The word occurs frequently in the inscriptions of the Raṭṭas of Saundatti. Vide Bombay Gazetteer, vol. 21 p. 354 and ' mahāmaṇḍaleśvara ' below.

मतिसाचिव—Councillor. The word occurs in the Inscription of Rudradāman. Vide p. 105 above.

मन्त्रिन्—Minister or councillor. The word occurs in Kauṭ. I. 8, Yāj. I. 312 and in Candrāvatī plate of Candradeva of Kanoj dated *saṁvat* 1148 (E. I. IX p. 302 at p. 305). Vide pp. 105–106 and n. 150 above.

महत्तक—Meaning uncertain. The word occurs as Mahāmahattaka in the Bodh Gaya Ins. dated in the 74th year of the Lakṣmaṇa-sena era (i. e. about 1194 A. D.) in E. I. XII p. 27 at p. 30.

महत्तम—Meaning uncertain. The word occurs in the Bhagalpur plate of Nārāyaṇapāla (I. A. vol. 15 at p. 306) and the Rajor grant of Mathanadeva in *saṁvat* 1016 (E. I. III p. 263 at p. 266 where both 'mahattara' and 'mahattama' occur one after another) and in Rājat. VII. 438.

महत्तर—lit. meaning 'elder' (of a town or village). Stein on Rājat. VII. 659 translates it as 'chamberlain.' The word occurs in the Kavi plate of Jayabhaṭa of the beginning of the 5th century A. D. (I. A. vol. V p. 114, ' rāṣṭragrāma-mahattara '), Gupta Ins. No. 38 p. 164 at p. 169 (the Maliya plate of Dharasena II), Abhona plates of Śaṅkaragaṇa (595 A. D.) in E. I. IX p. 297, Palitana plates of Siṁhāditya in the Gupta year 255 (E. I. XI pp. 16, 18), Valabhi grant of Dharasena II in Gupta year 252 (I. A. 15 p. 187), Vide also E. I. VIII p. 26 at p. 39 (śake 852), E. I. IV p. 278, 285 (śake 880), E. I. III p. 263, 266 (Vikrama year 1016), I. A.

vol. 16 p. 15 at p. 24 (śake 930). In the Daśakumāra-carita III p. 77 there is 'janapada-mahattara'. Vide note 148 above.

महाकरणिक—Vide 'karaṇika' above. The word occurs in the Benares plate of Cedi king Karṇadeva in Cedi era 793 (i. e. 1042 A. D.) in E. I. vol. II p. 297 at p. 309.

महाकर्ताकृतिक or महाकार्ताकृतिक—Meaning uncertain. The word occurs in the Bhagalpur plate of Nārāyaṇapāla (I. A. vol. 15 p. 304 at p. 306) and in the Nālandā plate of Devapāla (E. I. XVII at p. 321) and the Wala grant of Dhruvasena I in Gupta year 216 (I. A. vol. 4 p. 105).

महाकुमारामात्य—Vide 'Kumārāmātya' above. The word occurs in the same two plates as are mentioned under 'mahākartā-kṛtika'.

महाक्षत्रप—The great *satrap* or provincial Governor. The Mathurā Lion Pillar capital (Corpus I. I. vol. II p. 30 at p. 48) and the coins of Rajula are the earliest to mention this word. Vide the Mathurā stone Ins. of Śoṇḍāsa (E. I. IX p. 247) and Rudradāman's Ins. (E. I. VIII p. 36 at p. 44).

महाक्षपटलिक—Vide 'akṣapaṭatika' above. The word occurs in Gupta Ins. No. 39 at p. 120 (in 766 A. D.), in the Bhagalpur plate (I. A. 15 pp. 304, 316), Benares plate of Karṇadeva (A. D. 1042) in E. I. vol. II p. 309, in Lakṣmaṇasena's grant (E. I. XII p. 91), E. I. X at p. 100 (Vikrama year 1253). In the Madhuban plate of Harṣa (E. I. VII p. 155 at p. 158) we have 'mahākṣapaṭalādhikaraṇādhikṛta'.

महागणस्थ—meaning uncertain. The word occurs in the Naihati grant of Ballālasena (E. I. vol. XIV p. 156 at p. 160).

महातलवर—The functions of this high officer are not clear. See the Nagarjunikoṇḍa Ins. in E. I. XX at pp. 6 and 16 where a person is styled mahāsenāpati and mahātalavara. Has the word anything to do with the modern word 'talvār' meaning a sword? If it has then it would mean 'a great swordsman'. The word 'taravāri' in the sense of a double-edged sword occurs in the Yaśastilaka I. p. 50.

महादण्डनायक—Vide 'daṇḍanāyaka' above and p. 115 note 152. In the Gupta Ins. No. 1 pp. 10, 15 Hariṣeṇa, the author of the *praśasti*, is slyled sāndhivigrahika, kumārāmātya and mahā-daṇḍanāyaka; vide also Gupta Ins. No. 46 pp. 213, 216, Mathurā (Kuṣaṇa) Ins. of the year 74 (E. I. IX p. 242), E. I. XVI p. 230 the Kankhera stone

Ins. of the year 201 (279 A. D. ?) where we read 'mahādaṇḍanāyakena śakena śrīdharavarmaṇā'), in Nagarjunikoṇḍa Ins. (3rd century A. D.) in E. I. XX at p. 7; in the Wala grant of the Valabhi king Dhruvasena I in the Gupta year 216 there are five titles applied to Dhruvasena of which mahādaṇḍanāyaka is one (I. A. vol. 4 p. 105), the other four being mahāsāmanta, mahāpratīhāra, mahākārtākṛtika and mahārāja.

महादानपति—The great lord of gifts. The word occurs probably as a title only in the Taxila plate of Patika of the year 78 (Corpus I. I. vol. II p. 23 at p. 28).

महादानिक—Officer superintending the great gifts of the king called mahādānas. For mahādānas vide H. of Dh. vol. II pp. 869–870. The word occurs in the Kahla plate of Sodhadeva (E. I. vol. VII at p. 91).

महादेवी—The first wife of a king. The mahādevī or mahārājñī often heads the list of persons to whom royal grants are addressed. Vide Karṇadeva's plate dated in 1077 A. D. (E. I. XI. at p. 141).

महादौःसाधसाधनिक—Vide 'dauḥsādhasādhanika' above. The word occurs in Nārāyaṇapāla's plate (I. A. 15 p. 304 at p. 306) and Devapāla's Nālandā plate (E. I. XVII p. 310 at p. 321).

महाधर्माधिकरणिक—The chief justice. The word occurs in the Benares plate of Karṇadeva in A. D. 1042 (E. I. II p. 309) and also in his Goharwa plate (E. I. XI p. 139 at p. 141).

महाधर्माध्यक्ष—Vide 'dharmādhyakṣa' above. The word occurs in Lakṣmaṇasena's grant (E. I. XII p. 6 at p. 9).

महापाश्वकुलिक—Vide पश्वकुल above. The word occurs in Saṅgrāmagupta's Panchobh plate (JBORS. vol. V p. 582 at p. 588).

महापीलुपति—The great superintendent of elephants. Mahāpīlupati Pāśupata was the *dūtaka* of the Abhona plates of Kaṭaccuri Śaṅkaragaṇa in Kaṭaccuri *saṁvat* 347 (i. e. 595–6 A. D.) in E. I. IX p. 296 at p. 298. The word also occurs in Lakṣmaṇasena's grant (E. I. XII p. 6 at p. 9).

महाप्रतिहार—Superior officer above all doorkeepers., great chamberlain. The word occurs in the Kādambarī of Bāṇa para 97, in the Rājat. IV. 142. It occurs in the plates of Saṅgamasiṁha (541 A. D.) in E. I. X p. 72 at p. 75, in the Jesar plate of Śilāditya in 357 Valabhi year (E. I. XXII p. 117), in Gupta Ins. No. 46 pp. 213, 216, Benares plate of Karṇadeva in 1042 A. D. (E. I. vol. II p. 309).

महाप्रधान—Great Minister (or Prime Minister). A mahāpradhāna and daṇḍanāyaka Brahmadeva is found in an ins. of Kalacurya Saṅkama's time in 1178 A. D. (E. I. V p. 26 at p. 28). Vide also E. I. XV p. 32 at p. 36, I. A. vol. 9 p. 33 at p. 35 (where a mahāpradhāna Mahādevaiya under mahāmaṇḍaleśvara Anantadeva is mentioned in śake 1016.)

महाप्रभु—Governor. Vide Ehūra record of 1173 A. D. (E. I. XII at p. 335).

महाप्रमत्तवार (महाप्रमातार)—Vide the Godharva plate of Karṇadeva dated 1047 A. D. (E. I. XI p. 141).

महाप्रमातार—see प्रमातार above. The word occurs in the Banskhera plate of Harṣa (E. I. IV p. 208) and Benares plate of Karṇadeva (1042 A. D.) in E. I. vol. II p. 297 at p. 309.

महाबलाधिकृत—Great commander. Vide Gupta Ins. No. 23 at p. 109 in 191 Gupta year, the same person being also the *dūtaka* of the grant; E. I. X at p. 72 (valabhi *saṁvat* 117 in Kumāragupta's reign), E. I. VI p. 294 at p. 299 (609–610 A. D.), E. I. XI at p. 83 (Maitraka grant of Gupta year 252), E. I. XII p. 30 at p. 35.

महाभाण्डागारिक—Vide Bhāṇḍāgārika above. The word occurs in Karṇadeva's Benares plate (in 1042 A. D.) in E. I. vol. II p. 39 and in his other plate in E. I. XI p. 141 (in 1047 A. D.). For the Mahābhāṇḍāgāra office, vide Rājat. IV. 142.

महाभोगिक—Vide भोगिक above. Vide Lakṣmaṇasena's grant in E. I. XII p. 6 at p. 9.

महामण्डलनाथ—Same as mahāmaṇḍaleśvara. The word occurs in the Waghli ins. of Seuṇa dated śake 991 (E. I. II at p. 227).

महामण्डलीक—Same as the next. Occurs in Śilāra plate of Anantadeva in *śake* 1016 (I. A. vol. 9 p. 33 at p. 35).

महामण्डलेश्वर—Lord of a great territory. This title is borne by many of the Raṭṭas of Saundatti (vide Bombay Gazetteer vol. 21 p. 354 for Belgaum), by Śilāhāra chiefs of the Konkan, by the Kadambas of Hangal and other cities and several other chiefs throughout central and south India. Vide E. I. XIII at p. 16 (for Raṭṭas of Saundatti, 1204 A. D.), E. I. XIII p. 299 (for Kadamba Jayakeśi II being so called in A. D. 1125), E. I. V p. 234 at p. 236 and p. 238, E. I. XII p. 250 (for Bhandup plates of Śilāhāra Chittarājadeva in 1026 A. D.), J B B R A S vol. 9 p. 219 (Ambarnath Ins. dated śake 782), I. A. vol. 12 p. 119 (Bassein plates of

Yādava Seuṇacandra II, śake 991), I. A. vol. 11 p. 9 for Kākatīya Mahā-Rudradeva in *śake* 1084, E. I. VIII p. 205 for the Vāghela chiefs Lavaṇaprasāda and Vīradhavala being called Mahā-), E. I. XIV pp. 265-66 (Sinda chief Rācamalla II of Kurgod in *śake* 1095 and 1103), E. I. XIX p. 75 at p. 80 (Haihaya king Pṛthvīdeva I is styled Mahā- though he ruled over 20000 villages of Mahākosala.

महामन्त्रिन्—'Great Minister or councillor'. Occurs in the Benares plate of Cedi king Karṇadeva (E.I. vol. II p. 309 in 1042 A. D.) and his Goharwa plate dated 1047 A. D. (E. I. XI p. 141).

महामहत्तक—Vide mahattaka above. The word occurs in the Bodh Gaya Ins. dated in Lakṣmaṇasena year 74 (E. I. XII p. 27 at p. 30).

महामहत्तर—Vide mahattara above. The word occurs in the Purle plate of Gaṅga year 149 (E. I. XIV p. 362, where we read ājñā mahāmahattara-Śivaśarmā.

महामहन्तक—Occurs in the Kahla plate of Soḍhadeva in *saṁvat* 1134 (E. I. VII p. 85 at p. 91).

महामात्य—'Great or Prime Minister'. Vide note 148 above and Vogel p. 122. Occurs in Ambarnath Ins. of śake 782 (J B B R A S, vol. 9 p. 219), Bhadana plates of Śilāra Aparājita in śake 919 (E. I. III p. 267 at p. 290), plate of Karṇadeva in 1042 A. D. (E. I. vol. II. p. 309), I. A. vol. 11 p. 242 in Vikrama year 1320 equal to Valabhi year 945 where mahāmātyarāṇaka-Māladeva is said to have done all the business of the seal of Veraval Ins. of Arjunavarmadeva of Aṇahillapāṭaka and where a Mahomedan donor from Hurmuz grants some income to a *masjid* built by him, Mussulman congregations of Somanātha being appointed trustees.

महामात्र—High Officer. Vide Kauṭilya I. 12, V. 1 &c. and Kāmasūtra V. 5, 17, 33 and 35. The word occurs frequently in the Aśoka inscriptions e. g. the two separate Rock Edicts at Dhauli are addressed to the Mahāmātras of Tosali (Corpus I. I. vol. I pp. 92, 95, 97, 99 and 175). In the Sohagpur plate (of about 300 B. C.) also the 'Mahāmatas' of 'Savastī are mentioned (E. I. XXII p. 1). In Nasik Ins. No. 22 in E. I. VIII p. 93 (about 1st Century B. C.) the word 'mahāmateṇa' is interpreted as mahāmātyena in Bombay Gazetteer vol. 16 p. 592, but it is better to take it as mahāmātreṇa. Manu employs the word mahāmātrāh

(in IX. 259, which Medhātithi explains as 'mantrins, purohita and others', while Kullūka explains it as meaning those whose profession is to tame elephants).

महामुद्राधिकृत—Officer in charge of the Royal seal. Occurs in the grant of Laksmaṇasena in E. I. XII p. 6 at p. 9.

महाराज—'King or feudatory'. This is not an official under a king, but in some inscriptions an emperor addresses his order as to a grant of land to 'mahārāja mahārājñī-mahārājaputra' &c. Vide Banskhera plate of Harṣa (E. I. IV p. 208 at p. 211).

महाराजपुत्र—'Great prince'—occurs in Benares plate of Karṇadeva (E. I. vol. II p. 309 of 1042 A. D.) and his Goharwa plate in 1047 A. D. (E. I. XI p. 141) and Kahla plate of Soḍhadeva in *saṁvat* 1134 (E. I. VII p. 85 at p. 91).

महाराज्ञी—Vide E. I. VII p. 85 at p. 91.

महाराणक—Vide I. A. vol. 18 p. 214 (of *saṁvat* 1216).

महाव्यूहपति—'Chief Master of battle arrays'. Occurs in the plate of Bhojavarmadeva in E. I. XII p. 37 at p. 40.

महाश्रेष्ठिन्—Great banker. Occurs in Kahla plate of Soḍhadeva (E. I. VII pp. 85, 91).

महाश्वशाल—One of the five high offices instituted by Lalitāditya of Kashmir. Vide Rājat. IV. 142.

महाश्वसाधनिक—Commander of a cavalry force. Occurs in the Benares and Goharwa plates of Karṇadeva (in E. I. vol. II p. 309 and E. I. XI p. 141), Kharha plate of Yaśaḥkarṇadeva (E. I. XII p. 205 at p. 213).

महासन्धिविग्रहिक—Great Minister of peace and war. Occurs in Benares plate of Karṇadeva in 1041 A. D. (E. I. II. p. 309).

महासन्धिविग्रहाधिकृत—Great minister of peace and war. Occurs in the Palitana plate of Dharasena II in Gupta year 252 (E. I. XI p. 80), in plate of Buddharāja (E. I. VI at p. 299 in 609–10 A. D.), in the Pimpari plate of Dhruvarāja (E. I. X at p. 89) in śake 697. In the Harṣacarita (VI) Harṣa is said to have dictated his proclamation of *digvijaya* to 'Mahā...kṛta' who sat near him. In E. I. IX at p. 290 (plates of Śaṅkaragaṇa) and E. I. XII p. 30 at p. 35, we have 'mahāsandhivigrahādhikaraṇādhikṛta.

महासाधनिक—Great Commander. Occurs in Kahla plate of Soḍhadeva in Vikrama 1134 (E. I. VII p. 85 at p. 91).

महासाधनभाग—One of five high officers instituted by Lalitāditya of Kashmir. Vide Rājat. IV. 142–43.

महासान्धिविग्रहिक—Same as महासन्धिविग्रहिक. Occurs in Gupta Ins. No. 22 p. 100 at p. 104 (the Khoh plate of Gupta year 163), the Ambarnath Ins. dated śake 782 (JBBRAS. vol. 9 p. 219), the Bhagalpur plate of Nārāyaṇapāla (I. A. 15 p. 304 at p. 306), E. I. XI p. 141, E. I. XII p. 6 at p. 9 (Lakṣmaṇasena's grant).

महासामन्त—Great chieftain. The Yādavas of Sindinagara (vide E. I. II p. 217 of śake 922, I. A. 17 p. 120 of śake 948) and the Raṭṭas of Saundatti were often so styled (Bombay Gazetteer vol. 21 p. 354). The Valabhi king Dhruvasena is called mahārāja and mahāsāmanta in E. I. XI p. 107 (in Gupta year 206) and E. I. XV at 256 (in Gupta Year 210) and E. I. XIX p. 302 and p. 304. The word occurs in the Banskhera plate of Harṣa in his 22nd year i. e. about 628–29 A. D. (E. I. IV p. 208, at p. 211) and in the Madhuban plate of the 25th year of Harṣa's reign (E. I. vol. I pp. 63, 67). Vide also Bhagalpur plate of Nārāyaṇapāla (I. A. vol. 15 pp. 304, 306), Rāṣṭrakūṭa grant of śake 679 (JBBRAS. vol. 16 pp. 105, 108), E. I. XV p. 85 in śake 981 (where one Nāgadeva is both mahāsāmantādhipati and daṇḍanāyaka of Someśvara I), E. I. vol. II p. 309 (Benares plate of Karṇadeva).

महासामन्ताधिपति—Probably means the same thing as महासामन्त. In E. I. IV p. 259 one Bhogadevarasa is styled mahāsāmantādhipati and daṇḍanāyaka (Kelavadi Ins. of the time of Someśvara I in 1053 A. D.), E. I. VI pp. 285, 292 (plate of Mahā-Daṇḍivarma of Gujerat in śake 789), E. I. XX p. 61 (one Keśavayya is daṇḍanāyaka and mahā- of Beḷvola 300 in śake 934), E. I. V p. 234, I. A. vol. 48 p. 1, E. I. IV. p. 243 at p. 250.

महासेनापति—Great Commander of armies. The word occurs in the Nasik Ins. No. 24. We have a mahāsenāpati Bhavagopa (E. I. VIII at p. 94) and in Nasik Ins. No. 3 of Vasiṭhīputa Siripuḷumāvi (Bombay Gazetteer vol. 16 p. 556); in the Nagarjunikoṇḍa Ins. (of 3rd century A. D.) Chāntisiri is said to have been married to a person entitled mahāo and mahātalavara (E. I. XX p. 1 and pp. 6 and 16), in E. I. XII p. 6, 9 (Lakṣmaṇasena's grant).

मार्गपति—Guardian of frontiers or passes. Occurs in Nālandā stone Ins. of Yaśovarmadeva's time about 530 A. D. in E. I. XX pp. 37, 41.

मार्गपाल—Same as above. Occurs in Nārada quoted by the Mit. on Yāj. II. 271. Vide *dikpāla* above for the reference.

याष्टीक—' staff bearer ', an attendant on a king. Vide Rājat. VI. 203. The word is derived from ' yaṣṭi ' acc. to Pāṇ. IV. 4. 59 (meaning ' yaṣṭiḥ praharaṇam-asya ').

युक्त—An officer, whose exact function is not known ; but in the inscriptions of Aśoka it is said that *yuktas* are to receive orders from the *pariṣad* (council of ministers). Vide the 3rd Rock Edict at Girnar (Corpus I. I. vol. I p. 4). The word also occurs in Kauṭilya II. 5 and 9.

युक्तक—Same as above. Occurs in the Cambay plates of Govinda IV in śake 852 (E. I. VII pp. 26, 39) and the Karhad plates of Kṛṣṇa III of śake 880 (E. I. IV. pp. 278, 285).

युवराज—Crown Prince. Occurs in Kauṭ. I. 12 among the 18 tirthas. The word occurs in the Mathurā Lion pillar capital (Corpus I. I. vol. II p. 40) and in the Candrāvati plates of Candradeva of Kanoj (E. I. IX p. 302 at p. 304).

रजुक (or लजुक) or रज्जुक—An officer of land survey and revenue department. The word occurs (as rajuka) in the 3rd Rock Edict of Aśoka at Girnar in Corpus I. I. vol. I pp. 4-5 and in E. I. XXIV p. 52 (under Vākāṭaka Emperor Pravarasena II).

रहस्याधिकृत—Private Secretary. The word occurs in the Pallava Śivaskandavarman's grant (E. I. vol. 1 p. 2 at p. 7), in the Vilavatti grant of Pallava Siṁhavarman (E. I. XXII p. 296 at p. 298), in a Kadamba plate (E. I. VI p. 13).

राजकुमार—A prince. Occurs in the grant of Śivaskandavarman (E. I. vol. I p. 2 at p. 5).

राजकुल—(modern Rāvaḷ or Rāuḷ). Vide E. I. XX Appendix No. 324 for the Ins. of mahāmaṇḍaleśvara-rājakula-Raṇasīdeva in Vikrama year 1223, E. I. XXV at p. 156 Mayūrabhañja grant (where rājakula Heramba is said to be the *lekhaka*).

राजगुरु—Occurs frequently in the Inscriptions of the Raṭṭas of Saundatti (Bombay Gazetteer, vol. 21 p. 354 for Belgaum) and in the plate of Yādava Seuṇacandra (I. A. vol. 12 p. 119 at p. 120).

राजन्—Either a mere title or 'a feudatory'. This is often the first among the several persons addressed in several grants. The word occurs in Abhona plates of Śaṅkaragaṇa in 595 A. D. (E. IX p. 297), in the Candrāvatī plate of Candradeva of *saṁvat* 1148 (E. I. IX p. 305), in Lakṣmaṇasena's grant (E. I. XII at p. 9). Vide Vogel p. 121.

राजन्यक—a kṣatriya chief. It occurs in Lakṣmaṇasena's grant (E. I. XII p. 6 at p. 9).

राजपुत्र—*lit.* 'a prince', but in many inscriptions it has some technical meaning such as 'nobleman' or 'knight'. The word occurs in the Nālandā plate of Devapāla (E. I. XVII at p. 321 where the order is 'rāja-rāṇaka-rājaputra-rājāmātya), in Gupta Ins. No. 46 at pp. 213, 216, Bhagalpur plate of Nārāyaṇapāla (I. A. vol. 15 pp. 304, 306), in Lakṣmaṇasena's grant (E. I. VII p. 6 at p. 9). Vide Vogel p. 121 and Fleet's note 1 on p. 218 of Gupta Ins.

राजश्रेष्ठिन्—King's banker or chief of bankers. Occurs in Com. on Yaśastilaka I p. 91. Vide note 148 above.

राजस्थानीय—Exact function uncertain. In Gupta Ins. No. 35 at p. 157 he appears to be a high officer, but a low one in Gupta Ins. No. 38 at p. 170. In the Rājat. VIII. 2618 he appears to be chief justice. Bühler in I. A. vol. V p. 207 takes the word to mean 'an officer who carries out the object of protecting the subjects'. In J. R. A. S. 1895 p. 382 rājasthānīya Bhaṭṭi is the dūtaka of the grant. In the plates of Siṁhāditya in Gupta—Valabhi year 255 (574 A. D.) the order is 'rājaputra-rājasthānīyāmātya'. Vide the Banskhera plate of Harṣa (E. I. IV pp. 208, 211), Gupta Ins. No. 46 pp. 213, 216, Vasantagadh Ins. of Varmalāta in saṁvat 682 (E. I. IX p. 192), Palitana plate of Dharasena (E. I. XI p. 83), the Gujerat Rāṣṭrakūṭa grant of śake 697 in J B B R A S vol. 16 pp. 105, 108, Vogel p. 122 and explanation in E. I. XI p. 176.

राजानक—A minister. The title occurs frequently in the Rājat. (vide VI. 117, 261). It was given for services to the king and survives in the form 'Rāzdān' as a family name among Kashmir brāhmaṇas. The word occurs in the Bhagalpur plate of Nārāyaṇapāla (I. A. vol. 15 pp. 304, 306), in the Parikud plate of Madhyama-rājadeva of Śailodbhava dynasty (E. I. XI pp. 281, 286). Vide Vogel p. 121 who

remarks that the vassals of the Chamba king designated themselves in this way.

राजामात्य—King's minister. In the Nasik Ins. No. 19 (E. I. VIII p. 91) this word occurs in the Prākrit form 'rāyāmaca'. The word also occurs in Gupta Ins. No. 46 (pp. 213, 216), Nālandā plate of Devapāla (E. I. XVII at p. 321), Bhagalpur plate of Nārāyaṇapāla (I. A. vol. 15 pp. 304, 306).

राज्ञी—Queen. Vide Candrāvatī plate of Candradeva in *saṁvat* 1148 (E. I. IX at p. 305), the grant of Lakṣmaṇasena in E. I. XII at p. 9 (the order being 'aśeṣa-rāja-rājanyaka-rājñī-rāṇaka-rājaputra-rājāmātya &c.) and the plate of Vijayasena (E. I. XV at p. 283).

राणक—A nobleman. Occurs in Nālandā plate of Devapāla (E. I. XVII at p. 321), in Lakṣmaṇasena's grant (E. I. XII at p. 9), in the Ins. of Kalacuri Narasiṁhadeva of Dāhala in Vikrama year 1216 (I. A. vol. 18 p. 214). Vīradhavala and Lavaṇaprasāda of the Vāghela line are styled mahāmaṇḍaleśvara and rāṇaka in Abu Ins. No. 2 dated 1123 A. D. (E. I. VIII at p. 205). Vide J. B. O. R. S. vol. V p. 582 at p. 588.

राष्ट्रकूट—Head of a district (on the analogy of grāmakūṭa). Vide J B B R A S vol. 16 at p. 117.

राष्ट्रपति—Ruler of a province. The word occurs in E. I. VII p. 39 in 852 A. D., in the Karhad plates of Kṛṣṇa III dated śake 880 (E. I. IV pp. 278, 285), in the Kauṭheṁ plate of Vikramāditya V in śake 930 (I. A. vol. 16 pp. 15, 24).

राष्ट्रपाल—Head of a province. The word occurs in Kauṭ. V. I.

राष्ट्रिक—Ruler of a province. In the Prākrit form 'raṭṭhika' the word occurs in the grant of Śivaskandavarman (E. I. vol. I p. 2 at p. 5).

राष्ट्रिय—Ruler of a district or province. Vide p. 117 and note 155a above and Śāntiparva 85. 12.

रूपदर्शक—Examiner of coins. The word occurs in Kauṭ. II. 5, for which see note 184a. In E. I. XXII p. 30 there is a statement that in the Jogimāra inscription *rūpadakha* (rūpadarśa or rūpadakṣa ?) occurs. Prof. D. R. Bhandarkar takes it to mean 'banker'.

लिपिकर—Writer of an edict or order. The word occurs in the Brahmagiri Rock Ins. in Corpus I. I. vol. I at p. 176. Pāṇini III. 2. 21 teaches the formation of 'lipikara'.

लेखक—Scribe or clerk in a public office. The word occurs in Nasik Ins. No. 16 and No. 26 (Bombay Gazetteer vol. 16 pp. 582 and 605), in the Viṣṇudharmottara II. 24. 26–28, Śukra II. 120.

लेखहारक—Letter-carrier. Occurs in Rājat. VI. 319.

लेखाधिकारिन्—A Secretary. Occurs in Rājat. III. 206.

विद्याधिकारिन्—Director of education. In the Kondavīdu Ins. one Śrīnātha is said to have been the Vidyādhikārin of Vema in E. I. XI p. 313 at p. 314.

विनियुक्त—An officer, whose functions are not clear. The word occurs in the Bhavnagar plate of Dhruvasena I in 529 A. D. (E. I. XV p. 256), in the Valabhi grant of Dharasena II in Gupta year 252 (I. A. vol. 15 p. 187), in the Gupta Ins. No. 38 p. 164 at p. 169 (the Maliya plate of Dharasena II in Gupta year 252), the Bhagalpur plate of Nārāyaṇapāla (I. A. 15 pp. 304, 306).

विनियुक्तक—Same as above. The word occurs in the grant of Dharasena II in Gupta year 252 (E. I. XI pp. 80, 83), in the Nālandā plate of Devapāla in E. I. XVII at p. 321 (where the word is preceded by 'āyuktaka').

विषयपति—Ruler of a district. The word occurs in the Kavi grant of Jayabhaṭa (I. A. 5 p. 114, in the beginning of the 5th century A. D.), in the Abhona plates of Śaṅkaragaṇa in E. I. IX p. 297 (in 595 A. D.), in the Banskhera plate of Harṣa (E. I. IV pp. 208, 211), in the Karhad plate of Kṛṣṇa III dated śake 880 (E. I. IV pp. 278, 285), in the Bhagalpur plate of Nārāyaṇapāla (I. A. 15 pp. 304, 306), in E. I. VII p. 39 (in 852 A. D.).

विषयेश—Same as above. The word occurs in the grant of Śiva-skandavarman (E. I. vol. I at p. 5).

वीथिमहत्तर—Probably elder of a vīthi (a district). Occurs in a grant of Gupta year 120 (Indian Historical Quarterly vol. 19 p. 12 at pp. 16, 21).

वीरयात्रिक—'Person belonging to a military expedition'. The word occurs in Chamba Ins. Nos. 15, 25, 26. Vide Vogel p. 129.

वेटकिल—Meaning uncertain, but it may mean 'bearer of a Vīṭikā' (betel). It occurs in Chamba Ins. No. 15 at p. 166. Vide Vogel p. 128.

वेलावित—Meaning uncertain. The word occurs frequently in the Rājat. (V. 226, VI 73, 106, 127).

वैक्षेपिक—Function unknown. It occurs in E. I. XXVI at p. 206 (six Saindhava grants from Ghumli) of about 9th century A. D.

व्यवहारिन्—Meaning uncertain. It occurs in the plate of Jayanāga from Karṇa-suvarṇa (E. I. XVIII pp. 60, 63).

व्रजभूमिक—Superintendent of cowpens. It occurs in the 12th Rock Edict of Aśoka at Girnar in the form 'vacabhūmika' (Corpus I. I. vol. I p. 20).

शय्यापाल or शय्याग्राहक—Guardian of the bed-chamber. Vide 'Inscriptions from Baroda' edited by Mr. A. S. Gadre p. 72 (a village was donated to a Nāgara-brāhmaṇa Prabhākara who was 'śayyāgrāhaka of Karpūradevī').

शरभङ्ग—It occurs in the Nālandā plate of Devapāla (E. I. XVII at 321) and in Chamba Ins. No. 15 at p. 166 (where it is read as 'sarobhaṅga'. Vide Vogel p. 123 and 'Indian Culture' vol. VII p. 305 at p. 309. Has the word anything to do with the words 'śarayantra' and 'śarayantrī'? The latter was a title bestowed in Mithilā upon a very learned man who faced the ordeal of answering satisfactorily all questions on any śāstra put to him by learned ācāryas and also the questions put by common people. Vide a paper 'Declaration of śarayantrī', contributed to the All India Oriental Conference at Benares (in 1943) by Pandit Ramānātha Jha of Darbhanga.

शुल्कग्राह—An official who recovered tolls or customs duties. Occurs in Śukra II. 120.

शौल्किक—Superintendent of tolls or customs duties. The word occurs in Yāj. II. 173 and in Gupta Ins. No. 12 pp. 50, 52, in the grant of Dharasena II of Gupta year 252 (I. A. 15 p. 187), in Bhagalpur plate of Nārāyaṇapāla (I. A. 15 pp. 304, 306). Vide note on 'gaulmika' above

श्रीकरण—A scribe. The minister Hemādri is styled 'sarvaśrīkaraṇa-prabhu'. Vide H. of Dh. vol. I p. 356 n. 849.

श्रीकरणाधिप or श्रीकरणाग्रणी—Head of all scribes or head of all departments. In E. I. XIII at p. 17 one Bīcaṇa or Bīcirāja is said to have been the Śrīka- of mahāmaṇḍaleśvara Kārtavīrya IV of Hangal. Hemādri is styled 'samastakaraṇādhīśvara' or 'samastakaraṇādhipati'. Vide H. of Dh. vol. I pp. 356-357 notes 850-851.

षष्ठाधिकृत—Officer who collected the royal share viz. 6th of the crops. If occurs in the Khalimpur plate of Dharmapāla in E. I. IV p. 243 at p. 250.

सचिव—Minister. Vide p. 105 and note 150 above.

सञ्चरन्तक—A spy. It occurs in the grant of Śivaskandavarman (E. I. vol. I p. 2 at p. 5). In I. 12 Kauṭilya speaks of sañcāras (wandering spies like *tīkṣṇa*, *rasada* &c.).

संग्रहीतृ—Vide p. 111 above.

सन्धिविग्रहिक—Minister for peace and war. This form of the word occurs in Viṣṇudharmottara II. 24. 17 and in Śāntiparva 85. 30.

संनिधातृ—The Superintendent of the construction of the royal treasury, store houses &c. The word occurs in Kauṭ. II. 5, 1. 12 and in the plate of Mahābhavagupta (E. I. VIII pp. 138, 141 and E. I. XI pp. 93, 94). Vide p. 143 above.

समाहर्तृ—Collector-General. The word occurs in Kauṭ. I. 12 and II. 6, Śabara on Jai. XII. 1. 28 and in the plate of Mahābhavagupta (E. I. VIII at p. 141 and XI at p. 94). Vide p. 143 and note 184 above.

सर्वदण्डनायक—Commander-in-chief of all forces. The word occurs in I. A. vol. 8 p. 19, vol. 9 at p. 167, vol. 10 p. 129.

सर्वाधिकारिन्—Prime Minister. Occurs in Rājat. VII. 568.

सर्वाधिकृत—Probably the same as above. The word occurs in the Purle plate of Indravarman in the Ganga year 149 i. e. 605 A. D. (E. I. XIV pp. 360, 362).

सांवत्सर—Astrologer. Occurs in Viṣṇu Dh. S. III. 75, Bṛhatsaṁhitā 2. 9. Vide p. 126 above.

सांवत्सरिक—Astrologer. Occurs in Paiṭhīnasi. Vide note 193 above.

साध्यपाल—Bailiff who summoned parties and witnesses. Vide p. 278 above.

सान्धिविग्रहिक—Minister for peace and war. Occurs in Viṣṇudharmottara II. 24. 17 and in the Mit. on Yāj. I. 320 (which quotes a verse to the effect that the 'sandhivigrahakārin' is to issue a royal grant) and in Gupta Ins. No. 1 at p. 15 (the *praśasti* of Samudragupta).

सामन्त—feudatory chief. Under the Raṭṭas of Saundatti certain high officials are often so called (Bom. Gazetteer vol. 21 p. 354 for Belgaum). The word occurs in Abhona plates of

Śaṅkaragāṇa in 595 A. D. (E. I. IX p. 297), in Madhuban plate of Harṣa (E. I. VII at p. 158), E. I. VI p. 298 (plate of Buddharāja in 609-10 A. D.).

साहसाधिपति—Occurs in Śukra I. 120.

सीमकर्मकर—Officer who looked to the work of boundaries. Occurs in Gupta Ins. No. 46 pp. 213, 216.

सुमन्त्र—Vide p. 114 and note 150.

सूत—One of the *ratnins*. Vide p. 111 above.

सूपकारपति—Head cook. The word occurs in Taleśvara plates (E. I. XIII pp. 109, 115).

सेनभोगिक—Meaning uncertain. It occurs in the plate of Dantivarman of Gujerat in śake 789 (E. I. VI p. 285).

सेनापति—Commander-in-chief. Vide p. 127 above and Br. quoted by Viśvarūpa on Yāj. I. 307. Puṣyamitra, the founder of of the Śuṅga dynasty and Bhaṭārka, the founder of the Valabhi dynasty, and his son Dharasena were styled senāpati; vide I. A. 15 p. 187 (plate of Dharasena II in Gupta year 252), E. I. vol. I p. 2 at p. 5 (grant of Pallava Śivaskandavarman), JBBRAS vol. 16 pp. 105, 108, E. I. IX at p. 305.

सौवर्णिक—State goldsmith. Vide pp. 144-145 above.

स्कन्दक—A petty officer, probably head of the village administration. Vide Rājat. V. 175.

स्त्र्यध्यक्षमहामात्र—Officer superintendent of the harem. The word occurs in the 12th rock Edict of Aśoka in a prākrit form (Corpus I. I. vol. I at p. 20).

स्थपति—Architect. Vide Viṣṇudharmottara II. 24. 39.

स्थपतिसम्राट्—Chief architect. Occurs in Karitalai plates of Mahārāja Jayanātha (Gupta Ins. No. 26 of the Gupta year 174 at p. 119).

स्थानपाल—Officer in charge of a police post. Vide p. 149 above.

स्थानिक—An officer in charge of a ward of a city or a district. Vide pp. 143 and 149 above.

हस्त्यश्वोष्ट्रबलव्यापृतक—Officers in charge of the elephant arm, cavalry, camel corps of an army. This occurs in Chamba Ins. No. 15 at p. 166. In the Nālandā plate of Devapāla (E. I. XVII at p. 321) we have 'hastyaśvoṣṭra-nau-bala-vyāpṛtaka'.

NOTE 342 a—अत एवाह पितामहः।

छलानि चापराधांश्च पदानि नृपतेस्तथा । स्वयमेतानि गृह्णीयान्नृपस्त्वावेदकैर्विना ॥ पथिभङ्गी कराक्षेपी प्राकारोपरिलङ्घकः । निपानस्य विनाशी च तथा चायतनस्य च ॥ परिखापूरकश्चैव राजच्छिद्रप्रकाशकः ॥ अन्तःपुरं वासगृहं भाण्डागारं महानसम् । प्रविशत्यनियुक्तो यो भोजनं च निरीक्षते ॥ विण्मूत्रश्लेष्मवातानां क्षेप्तुकामो नृपाग्रतः । पर्यङ्कासनबन्धी चाप्यग्रस्थाननिरोधकः ॥ राज्ञोऽतिरिक्तवेषश्च विधृतः प्र विशेत्तु यः । यश्चापद्वारेण विशेद् वेलायां तथैव च ॥ शय्यासने पादुकयोः शयनासनरोहणम् (रोहणे ?) । राजन्यासन्नशयने यस्तिष्ठति समीपतः ॥ राज्ञो विद्विष्टसेवी चाप्यदत्तविहितासनः । वस्त्राभरणयोश्चैव सुवर्णपरिधायकः ॥ स्वयंग्राहेण ताम्बूलं गृहीत्वा भक्षयेत्तु यः । अनियुक्तप्रभाषी च नृपाक्रोशक एव च ॥ एकवासास्तथाभ्यक्तो मुक्तकेशोऽवगुण्ठितः । विचित्रिताङ्गः स्रग्वी च परिधानविधूनकः ॥ शिरःप्रच्छादनश्चैव छिद्रान्वेषणतत्परः । आसङ्गी मुक्तकेशश्च यश्च कर्णाक्षिकर्शकः (दर्शकः ?) । दन्तोल्लेखनकश्चैव कर्णनासाविशोधकः । छलान्येतानि पञ्चाशद्भवन्ति नृपसन्निधौ ॥ quoted in स्मृतिच॰ II. pp. 27–23, शुक्रनीति॰ IV. 5. 73–82 (except the name and the first verse) with variant readings.

NOTE 492—

नार्थसम्बन्धिनो नाप्ता न सहाया न वैरिणः । न दृष्टदोषाः प्रष्टव्याः साक्षिणः प्रतिदूषिताः ॥
दासनैकृतिकाश्राद्धवृद्धस्त्रीबालचाक्रिकाः । मत्तोन्मत्तप्रमत्तार्तकितवग्रामयाजकाः ॥
महापथिकसामुद्रवणिक्प्रव्रजितातुराः । व्यङ्गैकश्रोत्रियाचारहीनक्लीबकुशीलवाः ॥
नास्तिकव्रात्यदारामित्यागिनोऽयाज्ययाजकाः । एकस्थालीसहायारिचरज्ञातिसनाभयः ॥
प्राग्दृष्टदोषशैलूषविषजीव्यहितुण्डिकाः । गरदाग्निदकीनाशशूद्रापुत्रोपपातिकाः ॥
क्रान्तसाहसिकश्रान्तनिर्धनान्त्यावसायिनः । भिन्नवृत्तासमावृत्तजडतैलिकमूलिकाः ॥
भूताविष्टनृपद्विष्टवर्षनक्षत्रसूचकाः । अघशंस्यात्मविक्रेतृहीनाङ्गभगवृत्तयः ॥
कुनखी श्याम(व ?) दन्तश्च मित्रध्रुक् शठशौण्डिकाः । ऐन्द्रजालिकलुब्धोग्रश्रेणीगणविरोधिनः ॥
वधकश्चर्मकृत्पङ्गुः पतितः कूटकारकः । कुहकः प्रत्यवसितस्तस्करो राजपूरुषः ॥
मनुष्यपशुमांसास्थिमधुक्षीराम्बुसर्पिषाम् । विक्रेता ब्राह्मणश्चैव द्विजो वार्धुषिकश्च यः ॥
च्युतः स्वधर्मात्कुलिकः स्तावको हीनसेवकः । पित्रा विवदमानश्च भेदकृच्चेत्यसाक्षिणः ॥
नारद (ऋणादान 177–187)

NOTE 509—

नग्नो मुण्डः कपालेन भिक्षार्थी क्षुत्पिपासितः । अन्धः शत्रुगृहं गच्छेद्यः साक्ष्यमनृतं वदेत् ॥ १
नग्नो मुण्डः कपालेन परद्वारे बुभुक्षितः । अमित्रान्भूयशः(सः ?) पश्येद्यः साक्ष्यमनृतं वदेत् ॥ २
यां रात्रिमधिविन्ना स्त्री यां चैवाक्षपराजितः । यां च भाराभितप्ताङ्गो दुर्विवक्ता स तां वसेत् ॥ ३
साक्षी साक्ष्ये समुद्दिशन्गोकर्णशिथिलं वचः । सहस्रं वारुणान्पाशान्भुङ्क्ते स बन्धनाद्ध्रुवम् ॥ ४
तस्य वर्षशते पूर्णे पाश एव प्रमुच्यते । तदा पाशाद्विनिर्मुक्तः स्त्री संभवति मानवः ॥ ५
एवं संबन्धनात्तस्मान्मुच्यते नियताच्च सः । पशुगोश्वपुरुषाणां हिरण्यं भूर्यथाक्रमम् ॥ ६
यावतो बान्धवांस्तस्मिन् हन्ति साक्ष्येऽनृतं वदन् । तावतः संप्रवक्ष्यामि शृणु सौम्यानुपूर्वशः ॥ ७
पञ्च पश्वनृते हन्ति दश हन्ति गवानृते । शतमश्वानृते हन्ति सहस्रं पुरुषानृते ॥ ८
हन्ति जातानजातांश्च हिरण्यार्थेऽनृतं वदन् । सर्वं भूम्यनृते हन्ति मास्म भूम्यनृतं वदीः ॥ ९

एकमेवाद्वितीयं तत्प्राहुः पावनमात्मनः । सत्यं स्वर्गस्य सोपानं पारावारस्य नौरिव ॥ १०
अश्वमेधसहस्रं च सत्यं च तुलया धृतम् । अश्वमेधसहस्रात्तु सत्यमेव विशिष्यते ॥ ११
वरं कूपशताद्वापी वरं वापीशतात्क्रतुः । वरं क्रतुशतात्पुत्रः सत्यं पुत्रशताद्वरम् ॥ १२
भूर्धारयति सत्येन सत्येनोदेति भास्करः । सत्येन वायुः प्लवते सत्येनापः स्रवन्ति च ॥ १३
सत्यमेव परं दानं सत्यमेव परं तपः । सत्यमेव परो धर्मः लोकानामिति नः श्रुतम् ॥ १४
सत्यं देवाः समासेन मनुष्यास्त्वनृतं स्मृतम् । इहैव तस्य देवत्वं यस्य सत्ये स्थिता मतिः ॥ १५
सत्यं ब्रूह्यनृतं त्यक्त्वा सत्येन स्वर्गमेष्यसि । उक्त्वानृतं महाघोरं नरकं प्रतिपत्स्यसे ॥ १६
नरकेषु च ते शश्वज्जिह्वामुत्कृत्य दारुणाः । असिभिः शातयिष्यन्ति बलिनो यमकिङ्कराः ॥ १७
शूलैर्भेत्स्यन्ति चाक्रम्य क्रोशन्तमपरायणम् । अवस्थितं समुत्क्षिप्य क्षेप्स्यन्ति त्वां हुताशने ॥ १८
अनुभूय च तास्तीव्राश्चिरं नरकवेदनाः । इह यास्यसि पापासु गृध्रकाकादियोनिषु ॥ १९
ज्ञात्वैताननृते दोषाञ्ज्ञात्वा सत्ये च सद्गुणान् । सत्यं वदोद्धरात्मानं नात्मानं पातय स्वयम् ॥ २०
न बान्धवा न सुहृदो न धनानि महान्त्यपि । अलं धारयितुं शक्तास्तमस्युग्रे निमज्जतः ॥ २१
पितरस्त्ववलम्बन्ते त्वयि साक्षित्वमागते । तारयिष्यति किन्त्वस्मान् (किंन्वस्मान् ?) किं चायं पातयिष्यति ॥ २२
सत्यमात्मा मनुष्यस्य सत्ये सर्वं प्रतिष्ठितम् । सत्यमुक्त्वात्मनात्मानं श्रेयसा संनियोजय ॥ २३
यस्यां रात्रावजनिष्ठा यस्यां रात्रौ मरिष्यसि । वृथा तदन्तरं तुभ्यं साक्ष्यं चेदन्यथा कृथाः ॥ २४
ब्रह्मघ्नस्य तु ये लोका ये च स्त्रीबालघातिनाम् । ये च लोकाः कृतघ्नस्य ते ते स्युर्ब्रुवतो वृथा ॥ २५
नास्ति सत्यात्परो धर्मो नानृतात्पातकं परम् । साक्षिधर्मे विशेषेण सत्यमेव वदेत्ततः ॥ २६
पुराणोक्तौ द्वौ श्लोकौ भवतः । यः परार्थे प्रहिणुयात्स्वां वाचं पुरुषाधमः । आत्मार्थे किं न कुर्यात्स पापो नरकनिर्भयः ॥ २७
वाच्यर्था नियताः सर्वे वाङ्मूला वाग्विनिःसृताः । यो हि तां स्तेनयेद्वाचं स सर्वस्तेयकृन्नरः ॥ २८
नारद (ऋणादान 201–228)

Seven verses out of these occur elsewhere also. Verse 1 is the same as Manu 8. 93 and Vas. 16. 33; verse 3 is the same as Udyoga 35. 31; verses 7–9 are the same as Manu 8. 97–99, while verses 8–9 are the same as Udyogaparva 35. 33–34 and verse 8 occurs also in Baud. Dh. S. I. 10. 35 and Vas. 16, 34; verse 11 is the same as Ādiparva 74. 103, Śāntiparva 162. 26 and Anuśāsana 75. 29; verse 25 is almost the same as Manu 8. 89.

NOTE 1168 on घटस्फोट—

कश्चिज्जीवतोऽप्यन्त्यकर्म विहितं यथा प्रायश्चित्तानिच्छोः पतितस्य घटस्फोटे । तथाहि । महापातकेनोपपातकेन वा पतितो यदि प्रायश्चित्तं न करोति तदा तं गुरूणां बान्धवानां राज्ञश्च समक्षमाहूय तत्पापं प्रकटीकृत्य तं पुनः पुनरुपादिशेत् प्रायश्चित्तं कुरुष्वाचारं लभस्वेति । स यद्येवमपि नाङ्गीकरोति तदा रिक्तादितिन्यातिथौ सायाह्ने सपिण्डा बान्धवाश्च सम्भूय दासीहस्तेनानीतममेध्यकुत्सितजलादिपूर्णघटं सर्वतो दास्यायन्वारम्भं कुर्वन्तो दास्या दासस्य वा वामपादेन न्युब्जं छिन्नाग्रदर्भेषु कारयित्वा दासीसहिता वदेयुरसुमनुदकं करोमीति नामग्रहणपूर्वकं प्राचीनावीतिनो मुक्तशिखाश्च सन्तः । ततोऽधिकारी कर्ता दाहवर्जं जीवन्तमेवोद्दिश्य पिण्डोदकदानादिप्रेतकार्याण्येकादशाहान्तानि नाम्नैव कुर्यात् । मिताक्षरायां प्रेतकार्योत्तरं घट-

निनयनमुक्तम् । एकाहमाशौचं सर्वेषाम् । यस्य घटस्फोटः कृतस्तेन सह सम्भाषणस्पर्शादि-संसर्गो न केनापि कार्यः । करणे पतिततुल्यता । धर्मसिन्धु, परिच्छेद III, उत्तरार्ध p. 453. This is a summary of a longer passage on the same subject from the निर्णयसिन्धु, परिच्छेद III उत्तरार्ध p. 567.

As to taking back into the social fold a man who repents after ghaṭasphoṭa is performed the following procedure is prescribed in the Dharmasindhu:

धृतघटस्फोटस्य पुंसोऽनुतापे तत्पापप्रायश्चित्तान्ते संग्रहविधिरुच्यते । तत्रादौ शुद्धिपरीक्षा । कृतप्रायश्चित्तो ज्ञातिसमक्षं गोभ्यस्तृणभारं दद्यात् । गोभिस्तृणे भक्षिते शुद्धिः । भक्षणाभावे पुनः प्रायश्चित्तं चरेत् । एवं निश्चितसंशुद्धौ समानेयुर्नवं घटम् । हैमं वा मृन्मयं वापि पवित्रजलपूरितम् ॥ ततः सपिण्डास्तं घटं संस्पृश्याभिमन्त्र्य तज्जलैः पावमानीभिरापोहिष्ठेत्यादिभिस्तरत्समन्दीभिश्च पापिनमभिषिच्य तेन सह सर्वे स्नात्वा तं जलघटमस्मै दद्युः । स च शान्ता द्यौः शान्ता पृथिवी शान्तं विश्वमन्तरिक्षं यो रोचनस्तमिह गृह्णामीति यजुर्भिस्तं घटं गृह्णीयात् । ततस्तदुदकं तेनैव साकं सर्वे पिबेयुः । ततः स कूष्माण्डमन्त्रैराज्यहोमं कृत्वा सुवर्णं गां च दद्यात् । ततस्तस्य जातकर्मादिव्रतबन्धान्ता विवाहान्ता वा संस्काराः कार्याः । एवं कृते शुद्धेन तेन संस्पर्शसंभोजनादिव्यवहारं कुर्यात् । एवमुपपातके महापातके च कृतघटस्फोटस्य शुद्धिर्ज्ञेया । इति संक्षेपतः कृतघटस्फोटशुद्धिः । धर्मसिन्धु III उत्तरार्ध p. 454. The निर्णयसिन्धु (III उत्तरार्ध p. 568) has a similar but more elaborate note, quotes and relies on Gaut. 20. 10-17, Manu XI. 186, Yāj. III. 295, Vas. 15. 17-21, the Mit., Aparārka and Hemādri.

NOTE 1302—The बौ. गृ. शेषसूत्र (II. 6. 1-10) is as follows:—

अथातः पुत्रप्रतिग्रहकल्पं व्याख्यास्यामः । शोणितशुक्रसम्भवो मातृपितृनिमित्तकस्तस्य प्रदानपरित्यागविक्रयेषु मातापितरौ कर्तारौ भवतो न त्वेकं पुत्रं दद्यात्प्रतिगृह्णीयाद्वा स हि सन्तानाय पूर्वेषाम् । न तु स्त्री पुत्रं दद्यात्प्रतिगृह्णीयाद्वान्यत्रानुज्ञानाद्भर्तुः । पुत्रं प्रतिग्रहीष्यन्नुपकल्पयते—द्वे वाससी द्वे कुण्डले अङ्गुलियकं चाचार्यं च वेदपारगं कुशमयं बर्हिः पर्णमयमिध्ममिति । अथ बन्धूनां मध्ये राजनि चावेद्य परिषदि वागारमध्ये वा ब्राह्मणानन्नेन परिविष्य पुण्याहं स्वस्त्यृद्धमिति वाचयित्वाथ देवयजनोल्लेखनप्रभृत्याप्रणीताभ्यः कृत्वा दातुः समीपं गत्वा पुत्रं मे देहीति भिक्षेत ददामीतीतर आह । तं पुत्रं प्रतिगृह्णाति धर्माय त्वा गृह्णामि सन्तत्यै त्वा गृह्णामीति । अथैनं वस्त्रकुण्डलाभ्यामङ्गुलीयकेन चालङ्कृत्य परिधानप्रभृत्याग्निमुखात्कृत्वा पक्वाज्जुहोति । 'यस्त्वा हृदा कीरिणा मन्यमानः' इति पुरोनुवाक्यामनूच्य 'यस्मै त्वं सुकृते जातवेदः' इति याज्यया जुहोति । अथ आज्याहुतीरुपजुहोति—व्याहृतिभिर्हुत्वा स्विष्टकृत्प्रभृति सिद्धमाधेनुवरप्रदानात् । अथ दक्षिणां ददात्येते एव वाससी एते एव कुण्डले एतच्चाङ्गुलीयकम् । यद्येवंकृते औरसः पुत्र उत्पद्यते तुरीयभागेष भवतीति ह स्माह भगवान्बौधायनः ।

This is quoted in the दत्त. मी. pp. 152-153, सं. कौ. p. 177, धर्मसिन्धु III पूर्वार्ध p. 161 (partly) and Bühler published it with a translation in the Journal of the Bengal Asiatic Society vol. 35 pp. 161-164.

NOTE 1302—

शौनकोऽहं प्रवक्ष्यामि पुत्रसङ्ग्रहमुत्तमम् । अपुत्रो मृतपुत्रो वा पुत्रार्थं समुपोष्य च ॥ १
वाससी कुण्डले दत्त्वा उष्णीषं चाङ्गुलीयकम् । आचार्यं धर्मसंयुक्तं वैष्णवं वेदपारगम् ॥ २
मधुपर्केण संपूज्य राजानं च द्विजाञ्शुचीन् । बर्हिः कुशमयं चैव पालाशं चेध्ममेव च ॥ ३
एतानाहृत्य बन्धूंश्च ज्ञातीनाहूय यत्नतः । बन्धूनन्नेन संभोज्य ब्राह्मणांश्च विशेषतः ॥ ४
अन्वाधानादि यत्तन्त्रं कृत्वाज्योत्पवनादिकम् । दातुः समक्षं गत्वा तु पुत्रं देहीति याचयेत् ॥ ५
दाने समर्थो दातास्मै ये यज्ञेनेति पञ्चभिः । देवस्य त्वेति मन्त्रेण हस्ताभ्यां प्रतिगृह्य च ॥ ६
अङ्गादङ्गेत्यृचं जप्त्वा चाघ्राय शिशुमूर्धनि । वस्त्रादिभिरलङ्कृत्य पुत्रच्छायावहं सुतम् ॥ ७
नृत्यगीतैश्च वाद्यैश्च स्वस्तिशब्दैश्च संयुतम् । गृहमध्ये तमादाय चरुं हुत्वा विधानतः ॥ ८
यस्त्वा हृदेत्यृचा चैव तुभ्यमग्र ऋचैकया । सोमो दददित्येताभिः प्रत्यृचं पञ्चभिस्तथा ॥ ९
स्विष्टकृदादिहोमं च कृत्वा शेषं समापयेत् । ब्राह्मणानां सपिण्डेषु कर्तव्यः पुत्रसंग्रहः ॥ १०
तदभावेऽसपिण्डो वा अन्यत्र तु न कारयेत् । क्षत्रियाणां स्वजातौ वा गुरुगोत्रसमोपि वा ॥ ११
वैश्यानां वैश्यजातेषु शूद्राणां शूद्रजातिषु । सर्वेषामेव वर्णानां जातिष्वेव न चान्यतः ॥ १२
दौहित्रो भागिनेयश्च शूद्रस्यापि च दीयते । ब्राह्मणादित्रये नास्ति भागिनेयः सुतः क्वचित् ॥ १३
नैकपुत्रेण कर्तव्यं पुत्रदानं कदाचन । बहुपुत्रेण कर्तव्यं पुत्रदानं प्रयत्नतः ॥ १४
दक्षिणां गुरवे दद्याद्यथाशक्ति द्विजोत्तमः । नृपो राष्ट्रार्धमेवापि वैश्यो वित्तशतत्रयम् ॥ १५

शूद्रः सर्वस्वमेवापि अशक्तश्चेद्यथाबलम् । १६

The above text of Śaunaka is based on the व्यव. मयूख, नि. सि. (which does not quote all verses), दत्त. मी., दत्त. च., सं. कौ. and Dr. Bühler's text prepared from several mss. and published in the Journal of the Bengal Asiatic Society, vol. 35 at pp. 158–159. The शौनकीय text printed at Trivandrum, 1935, has 14½ verses on पुत्रग्रहणविधि (I. 8). The principal various readings are noted below. Verse 1—सं. कौ. reads 'वन्ध्या वा मृतपुत्रा वा'; शौ. reads वन्ध्यो वा. The half verse 3a मधुपर्केण &c. is omitted by Bühler, व्यव. मयूख, नि. सि., सं. कौ. In 5a दत्त. मी. and दत्त. च. read अन्वाधानादिकं तत्र, and शौ., सं. कौ. and Bühler अन्वाधानादि; and शौ. reads °त्पवनान्तकम्. In 6a शौ. reads समक्षस्थो ददेत्तस्मै. The नि. सि. omits 7b and 8a and सं. कौ. reads छत्रच्छायागतं सुतम् in 7b and शौ. छत्रच्छायावहम्. In 8b सं. कौ. and शौ. read गृहमेत्येध्ममाधाय. In 9a सं. कौ. and शौ. read यस्त्वा हृदेति द्वाभ्यां च and in 10a स्विष्टकृदादिशेषं च कृत्वा होमं. In 11b दत्त. मी., Bühler and दत्त. च. read गुरुगोत्रसमेपि. In 13a Bühler and सं. कौ. read दौहित्रं भागिनेयं वा शूद्राणां चापि दापयेत्; दत्त. मी. reads शूद्रैस्तु क्रियते सुतः and also recognizes the reading शूद्राणां विहितः सुतः. The स्मृतिमु. (वर्णाश्रम) p. 102 and शौ. read दौहित्रं भागिनेयं वा शूद्राणां त्वापदो यदि and omits ब्राह्मणादि... क्वचित्. 13b (ब्राह्म. ... क्वचित्) is omitted by the व्यव. मयूख., सं. कौ., and Bühler. In 15b सं. कौ. and शौ. read रत्नशतत्रयम्. The order of the verses also slightly varies in some of the works.

NOTE 1751—वनपर्व 188, 30-64

सहस्रान्ते नराः सर्वे प्रायशोनृतवादिनः । यज्ञप्रतिनिधिः पार्थ दानप्रतिनिधिस्तथा ॥ ३०
व्रतप्रतिनिधिश्चैव तस्मिन् काले प्रवर्तते । ब्राह्मणाः शूद्रकर्माणस्तथा शूद्रा धनार्जकाः ॥ ३१
क्षत्रधर्मेण वाप्यत्र वर्तयन्ति गते युगे । निवृत्तयज्ञस्वाध्याया दण्डाजिनविवर्जिताः ॥ ३२
ब्राह्मणाः सर्वभक्षाश्च भविष्यन्ति कलौ युगे । अजपा ब्राह्मणास्तात शूद्रा जपपरायणाः ॥ ३३
विपरीते तदा लोके पूर्वरूपं क्षयस्य यत् । बहवो म्लेच्छराजानः पृथिव्यां मनुजाधिप ॥ ३४
मृषानुशासिनः पापा मृषावादपरायणाः । आन्ध्राः शकाः पुलिन्दाश्च यवनाश्च नराधिपाः ॥ ३५
काम्बोजा बाल्हिकाः शूरास्तथाभीरा नरोत्तम । न तदा ब्राह्मणः कश्चित्स्वधर्ममुपजीवति ॥ ३६
क्षत्रियाश्चापि वैश्याश्च विकर्मस्था नराधिप । अल्पायुषः स्वल्पबलाः स्वल्पवीर्यपराक्रमाः ॥ ३७
अल्पसाराल्पदेहाश्च तथा सत्याल्पभाषिणः । बहुशून्या जनपदा मृगव्यालावृता दिशः ॥ ३८
युगान्ते समनुप्राप्ते वृथा च ब्रह्मवादिनः । भोवादिनस्तथा शूद्रा ब्राह्मणाश्चार्यवादिनः ॥ ३९
युगान्ते मनुजव्याघ्र भवन्ति बहुजन्तवः । न तथा घ्राणयुक्ताश्च सर्वगन्धा विशांपते ॥ ४०
रसाश्च मनुजव्याघ्र न तथा स्वादुयोगिनः । बहुप्रजा ह्रस्वदेहाः शीलाचारविवर्जिताः ॥
मुखेभगाः स्त्रियो राजन् भविष्यन्ति युगक्षये ॥ ४१
अट्टशूला जनपदाः शिवशूलाश्चतुष्पथाः । केशशूलाः स्त्रियो राजन् भविष्यन्ति युगक्षये ॥ ४२
अल्पक्षीरास्तथा गावो भविष्यन्ति जनाधिप । अल्पपुष्पफलाश्चापि पादपा बहुवायसाः ॥ ४३
ब्रह्मवध्यानुलिप्तानां तथा मिथ्याभिशंसिनाम् । नृपाणां पृथिवीपाल प्रतिगृह्णन्ति वै द्विजाः ॥ ४४
लोभमोहपरीताश्च मिथ्याधर्मध्वजावृताः । भिक्षार्थं पृथिवीपाल चञ्चूर्यन्ते द्विजैर्दिशः ॥ ४५
करभारभयाद्भीता गृहस्थाः परिमोषकाः । मुनिच्छद्माकृतिच्छन्ना वाणिज्यमुपजीविनः ॥ ४६
मिथ्या च नखरोमाणि धारयन्ति तदा द्विजाः । अर्थलोभान्नरव्याघ्र तथा च ब्रह्मचारिणः ॥ ४७
आश्रमेषु वृथाचारा पानपा गुरुतल्पगाः । इहलौकिकमीहन्ते मांसशोणितवर्धनम् ॥ ४८
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यथर्तुवर्षी भगवान् तथा पाकशासनः । न चापि सर्वबीजानि सम्यग्रोहन्ति भारत ॥ ५०
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भूयिष्ठं कूटमानैश्च पण्यं विक्रीडते (विक्रीणते ?) जनः (नाः ?) । वणिजश्च नरव्याघ्र
बहुमाया भवन्त्युत ॥ ५३
धर्मिष्ठाः परिहीयन्ते पापीयान्वर्धते जनः । धर्मस्य बलहानिः स्यादधर्मश्च बली तथा ॥ ५४
अल्पायुषो दरिद्राश्च धर्मिष्ठा मानवास्तथा । दीर्घायुषः समृद्धाश्च विधर्माणो युगक्षये ॥ ५५
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सञ्चयेन तथाल्पेन भवन्त्याढ्यमदान्विताः । धनं विश्वासतो न्यस्तं मिथो भूयिष्ठशो नराः ॥५७
हर्तुं व्यवसिता राजन् पापाचारसमन्विताः । नैतदस्तीति मनुजा वर्तन्ते निरपत्रपाः ॥ ५८
पुरुषादानि सत्त्वानि पक्षिणोथ मृगास्तथा । नगराणां विहारेषु चैत्येष्वपि च शेरते ॥ ५९
सप्तवर्षाष्टवर्षाश्च स्त्रियो गर्भधरा नृप । दशद्वादशवर्षाणां पुंसां पुत्रः प्रजायते ॥ ६०
भवन्ति षोडशे वर्षे नराः पलितिनस्तथा । आयुःक्षयो मनुष्याणां क्षिप्रमेव प्रपद्यते ॥ ६१
क्षीणायुषो महाराज तरुणा वृद्धशीलिनः । तरुणानां च यच्छीलं तद् वृद्धेषु प्रजायते ॥ ६२

विपरीतास्तदा नार्यो वञ्चयित्वार्हतः पतीन्। व्युच्चरन्त्यपि दुःशीला दासैः पशुभिरेव च ॥ ६३
वीरपत्न्यस्तथा नार्यः संश्रयन्ति नरान्नृप । भर्तारमपि जीवन्तमन्यान् व्यभिचरन्त्युत ॥ ६४

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भृग्वग्निपतनाद्यैश्च वृद्धादिमरणं तथा । ३५
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A few important readings have already been noted in the text and notes there. The most extensive lists of Kalivarjyas occur in Sm. C., Hemādri (pariśeṣakhaṇḍa, vol. III. part 2 pp. 666–668), Par. M. vol. I part 1 pp. 134–137, Madanaratnapradīpa (Samayanirṇaya) Ms. No. 146 of Viś. collection I (now in the Govt. Mss. Library at B. O. R. Institute, Poona), Udvāhatattva (p. 112–113) and Śuddhitattva pp. 273–274 (Jiv.), Nirṇayasindhu, Samayamayūkha, Bhaṭṭoji on Caturviṁśatimata and Smṛti-kaustubha. Detailed explanations are given in the last four of these and in Kṛṣṇabhaṭṭa's com. on the Nir. S.

2. Some works such as the कलिवर्ज्यवि. read समापने निवृत्तानि, which कलिवर्ज्यवि. explains as जनमेजययज्ञसमाप्तौ and कृष्णभट्ट on नि. सि. p. 1292 explains similarly.

4. मदनरत्नप्रदीप (folio 209a) reads बाल्ययाक्षतयोन्याश्च.

18. The समयप्रकाश reads 'सवर्णानां तथा दुष्टैः संसर्गः' &c.

20–21. These are omitted in स्मृतिच., परा. मा., उद्वाहतत्त्व and some other works, though found in हेमाद्रि, भट्टोजि, कलिवर्ज्यवि. and निर्णयसिन्धु.

26. स्मृतिमुक्ताफल (आह्निक p. 447) reads भोज्यान्नता कलौ नास्ति तीर्थसेवा च दूरतः ।

33. भट्टोजि and कलिवर्ज्यवि. read विधिचोदिता for गुरु°.

38. परा. मा., समयमयूख p. 109, कलिवर्ज्यवि. and भट्टोजि read यत्रसायंगृहत्वं च.

42–45. These are omitted by many of our authorities, though they occur in हेमाद्रि, समयमयूख, स्मृतिकौ., समयप्रकाश.

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[N. B.—If a topic occurs in the text as well as in a footnote on the same page, a reference to the page alone is generally given].

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